

MINUTES
BOARD OF SUPERVISORS
COUNTY OF YORK

Regular Meeting
December 2, 2003

7:00 p.m.

Meeting Convened. A Regular Meeting of the York County Board of Supervisors was called to order at 7:00 p.m., Tuesday, December 2, 2003, in the Board Room, York Hall, by Chairman James S. Burgett.

Attendance. The following members of the Board of Supervisors were present: Walter C. Zarembo, Sheila S. Noll, Donald E. Wiggins, James S. Burgett, and Thomas G. Shepperd.

Also in attendance were James O. McReynolds, County Administrator; J. Mark Carter, Assistant County Administrator; and James E. Barnett, County Attorney.

Invocation. Miss Melissa McReynolds, York County Youth Commission, gave the Invocation

Pledge of Allegiance to the Flag of the United States of America. Chairman Burgett led the Pledge of Allegiance.

PRESENTATIONS

YORK COUNTY YOUTH COMMISSION

Mr. Aneesh Venkat, Chairman of the York County Youth Commission, provided the Board with the Commission's second quarterly report. He stated the main thrust of this year's commission has been to make itself better known to the youth of the county. He spoke of the different advertising being used in high school newspapers to further this purpose, and logo polo shirts are being ordered for the Commissioner's to wear. The Commission has been busy with plans for redesigning its official web page to provide updated information to the youth of the County. He noted the Commission now has its own email address: youth@yorkcounty.gov. Mr. Venkat noted that on Saturday, November 15, the Commissioners spent time picking up trash for an Adopt-A-Highway project. This Friday the Commission will assist with the annual Christmas Tree lighting Ceremony to be held in Yorktown. He also noted the Commission is planning its 4th annual ski trip to Wintergreen in coordination with the Parks and Recreation Division. Plans are also underway to sponsor a County-wide talent show. Mr. Venkat then briefed the Board on the Commission's progress with its Survey 2002 implementation. He noted that in the high schools this week the students were participating in the 4th annual Youth Week event. Mr. Joseph Jennings, a former gang leader, brought the students a message of hope that everyone has the right to change. Mr. Venkat invited the Board members to attend Mr. Jennings' talk on December 4 at Tabb High School.

CITIZENS COMMENT PERIOD

Mrs. Marsha Brown, 213 Nelson Street, spoke on the Historic District overlay, and requested that the Board vote against this ordinance. She stated that passage of this ordinance in no way protects the historic sites in the Yorktown Village, and she feels it is the Board's way to control the residents' properties. She stated Republicans believe in less government control and individual rights, and she did not feel any Republican would vote for such a matter.

Mr. David Brown, 213 Nelson Street, also spoke about the historic district overlay, stating the residents of the village are veterans also, and their most important freedom is the right of ownership of property. He noted it has been said that the Yorktown residents are not willing to compromise, but 90 percent of the village voted against this plan, and he asked the Board to vote against it.

Mr. John Carver, 236 Nelson Street, stated freedom means little without property rights. He asked the Board of Supervisors to table this application until the remaining members of the Board and the homeowners can meet again. He stated this proposal affects property rights, and when this happens compensation should be awarded, and this is not happening.

Mr. Rogers Hamilton, 114 Church Street, spoke to oppose the historic district zoning. He noted he is the Chairman of the Yorktown property owners group, and the group voted overwhelmingly against this proposal. He noted that Mr. Zaremba had indicated he would vote against it, and he expressed his hope that the rest of the Board will also. Staff does not run this County. He asked the Board to respond to its obligation.

Mrs. Martha Hamel, 101 Pulaski Street, asked the Board to vote against the historic district or table the matter for further discussion. She stated she was puzzled by the need for a review board and a historic district in Yorktown, stating there are only a few historic structures remaining, and they are protected by the National Park Service or are on the National Historical Register. She stated she would like to have the opportunity to meet with the rest of the Board of Supervisors to discuss alternative plans, noting there are still many unanswered questions. She thanked Mr. Zaremba and Mr. Wiggins for meeting with the group earlier.

Mr. Gene Barton, 208 Walden Drive, spoke concerning tree removal. He stated when the County announced to the media it had completed the first round of pickups, the residents were surprised because no one had been in their neighborhood. The pickups were not equitable based on how hard hit the neighborhoods were. He indicated that they are now told they have to pay \$10 for future pickups when there is a lot of debris that was never picked up. He stated the people who got hit the hardest should have been picked up first and often, and there is still a lot of work to be done. Mr. Barton stated he did not understand why the FEMA people were being released. He stated the Waste Management people are not listening, and the residents do not feel they should be limited to an 8-inch diameter size for trees.

Mr. Robert Baals, 210 Walden Drive, stated there are about six houses on Walden where there is a lot more damage than most. There are still many trees in the neighborhood that need to be taken down and that are bigger than 24-inches in diameter. With the damage to many of the homes, it has taken a lot of time just to deal with getting repairs done. He stated he just got his roof fixed today, and he has a lot of logs to move out to the road. Mr. Baals stated he didn't mind paying the \$10, but the 8-inch diameter restriction is unreasonable.

COUNTY ATTORNEY REPORTS AND REQUESTS

Mr. Barnett provided a schedule for the County Attorney's office next week due to the Local Governmental Attorney's conference being held next Wednesday, Thursday, and Friday.

COUNTY ADMINISTRATOR REPORTS AND REQUESTS

Mr. McReynolds reminded the Board of Supervisors of the work session scheduled for December 9 on building maintenance code issues and a review of the requests for new programs/personnel in FY2005. He noted that December 16 is the last regular meeting for the Board, and the first meeting of 2004 is January 6. Mr. McReynolds then discussed the debris removal, stating staff can now pick up larger items, up to 24-inches in diameter and 10 feet in length. He noted that Mr. Hudgins would be getting the word out to the residents.

At Mr. Zaremba's request, Mr. McReynolds then briefed the Board members on the topics covered at the last Homeowners' Associations Meeting, and he explained how the County communicates with subdivisions not having formal associations.

At Mr. Shepperd's request, Mr. McReynolds discussed the size of the garbage and recycling totes. He indicated that the sizes of the garbage and recycling totes are based on research that addressed the average amount of garbage generated by each household. He noted that if a household would like to have more than one container, they should contact Waste Management to get an additional one.

MATTERS PRESENTED BY THE BOARD

Mrs. Noll expressed her hope that everyone had a nice Thanksgiving holiday. She noted the Board of Supervisors had a meeting with the School Board last week which occurs every year to discuss the upcoming fiscal year budget. The two finance directors briefed the two boards on the anticipated expenses and revenues for FY2005. She indicated she attended a luncheon today put on by an organization recognizing women in business, and 25 women were honored at that time, one being a York County resident and a product of York County schools--Anne C. Connor.

Mr. Zaremba reminded the citizens that as of January 1, there will be no more vehicle decals. The Board has addressed the requirement for a County decal by doing away with them. He stated a lot of work by staff was accomplished with the Commissioner of the Revenue and the Treasurer's office to accomplish this. Mr. Zaremba also noted that the fee does not go away, but no one has to worry about having to purchase the decal itself.

Mr. McReynolds noted that the state registration will be used as the enforcement tool.

Mr. Zaremba stated he feels the County has moved a long way to meet what a large number of the population wanted. He then discussed debris removal, stating that after Hurricane Isabel the County had information forums where the staff came together with the citizens to discuss what the residents could do to recover from the storm. He reminded the citizens of two recourses if they are not satisfied with payments by their insurance companies on claims. The state has a commissioner of insurance where complaints can be filed, and there are public adjusters whose purpose is to represent the resident's best interest instead of the insurance company. Mr. Zaremba then spoke of another series of articles he had been reading with respect to tourism that indicated hotel room occupancy may dip below 50 percent. He noted the Historic Triangle area has been hit significantly; but while occupancy is below what it was 2 to 3 years ago, timeshare occupancy is on the rise. He stated he felt there was an issue here for the Regional Issues Committee to look into as to a possible regional fix to the issue since all the localities depend on tourism as a major portion of the income stream.

Chairman Burgett stated this Friday the annual Christmas Tree Lighting Ceremony would be held, and he invited everyone to come out and enjoy the festivities. He stated that next Tuesday he would be taking part in turning the first shovel of dirt for the Great Wolf Lodge going up in the Lightfoot area. He noted it is a \$40 million investment in York County. Mr. Burgett also noted he attended the Mayors and Chairs this past week. At that time the Mayors and Chairs voted to hire a consultant to study the merging of the workforce development entities on the Peninsula with those on the southside. He announced that this Saturday the homes tour sponsored by the Yorktown Foundation would take place. Mr. Burgett then shared the concern he has about the little motor scooters that are being seen everywhere, and children are riding them without safety helmets. He asked Mr. Barnett to look into the County being able to at least require riders to wear safety helmets while riding the scooters.

CONSENT CALENDAR

Mr. Zaremba asked that Item Nos. 7 and 9 be removed from the Consent Calendar.

Mrs. Noll moved that the Consent Calendar be approved as amended, Item No. 8.

On roll call the vote was:

Yea:	(5)	Zaremba, Noll, Wiggins, Shepperd, Burgett
Nay:	(0)	

Thereupon, the following resolution was adopted:

Item No. 8. PUBLIC SEWER EXTENSION AGREEMENT: BUNTING POINT SUBDIVISION:
Resolution R03-182:

A RESOLUTION TO AUTHORIZE AN EXTENSION OF THE
COUNTY'S SANITARY SEWER SYSTEM TO A PROPOSED DE-
VELOPMENT KNOWN AS BUNTING POINT, AND AUTHORIZING
EXECUTION OF THE NECESSARY PUBLIC SEWER EXTENSION
AGREEMENT

WHEREAS, Calthrop Neck, L.L.C. has requested that the County enter into a public sewer extension agreement pursuant to § 18.1-53 (b) of the York County Code to serve sixteen new residential lots; and

WHEREAS, the plan for the proposed project has been reviewed by the County; and

WHEREAS, prior to final approval of these plans and the initiation of any construction activity, it is necessary that a determination be made as to whether the Board will authorize the extension of the public sewer facilities of the County to serve the proposed development; and

WHEREAS, it has been determined that sufficient capacity exists in the County's existing sewer system to serve the proposed development, or will exist when the facilities proposed by the developer are constructed; and

WHEREAS, in accordance with the terms of Chapter 18.1 of the York County Code the total connection fee to be paid to the County for the proposed extension to serve this development has been determined to be \$92,800.00;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this 2nd day of December, 2003, that the Board approves the extension of the County's public sewer system to serve the proposed development, Bunting Point, and that the County Administrator be, and he hereby is, authorized to execute a public sewer extension agreement with Calthrop Neck, L.L.C. for the proposed extension; such agreement to be approved as to form by the County Attorney.

Item No. 7. ROUTE 171 WALKWAY AND LANDSCAPING: Proposed Resolution R03-189.
(Removed from Consent Calendar)

Mr. Zaremba asked if this action is part of the County's directed major highway beautification program.

Mr. Carter stated it is a Revenue Sharing project previously discussed by the Board. He stated it fits in with improved walkways on heavily traveled highways. He noted the County received input from Kiln Creek in terms of cost because its residents will benefit quite a bit as will the businesses along the frontage that have donated easements.

Discussion followed on the funding of the project.

Mr. Zaremba then moved the adoption of proposed Resolution R03-189 that reads:

A RESOLUTION TO AUTHORIZE THE COUNTY ADMINISTRATOR
TO EXECUTE AGREEMENTS FOR ROUTE 171 WALKWAY AND
LANDSCAPING

WHEREAS, it is the policy of the Board of Supervisors that all procurements of goods and services by the County involving the expenditure of \$30,000 or more be submitted to the Board for its review and approval; and

WHEREAS, the County Administrator has determined that the following procurements is necessary and desirable, that it involves the expenditure of \$30,000 or more, and that all applicable laws, ordinances, and regulations have been complied with;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this 2nd day of December, 2003, that the County Administrator be, and hereby is, authorized to execute procurement arrangements for the following:

	<u>AMOUNT</u>
Route 171 Walkway and Landscaping	\$93,726

On roll call the vote was:

Yea:	(5)	Noll, Wiggins, Shepperd, Zaremba, Burgett
Nay:	(0)	

Item No. 9. PROCUREMENT OF BIOMEDICAL EQUIPMENT: Proposed Resolution R03-191.
(Removed from Consent Calendar)

Mr. Zaremba asked what equipment would this action procure.

Chief Stephen P. Kopczynski, Fire Chief, stated the department equips its ambulances, fire trucks, and some other staff vehicles with defibrillators, and they are in need of replacement. New state regulations require that they be upgraded. He stated staff has applied for two grants and has received one. Chief Kopczynski stated he felt there was a very good chance of receiving the other grant, and the two would pay for about 50 percent of the total cost of replacement.

Mr. Zaremba noted these are very critical pieces of equipment as well as being very expensive. York County's Fire and Life Safety Department is one of the premiere organizations of its kind on the east coast, and the County prides itself in having the best equipment possible for its citizens.

Discussion followed concerning trade-in value of the current equipment.

Mr. Zaremba then moved the adoption of proposed Resolution R03-191 that reads:

A RESOLUTION TO AUTHORIZE THE COUNTY ADMINISTRATOR TO ACCEPT, EXECUTE, AND APPROPRIATE GRANTS AWARDED TO YORK COUNTY BY THE VIRGINIA DEPARTMENT OF HEALTH FOR THE REPLACEMENT OF ITS ADVANCED LIFE SUPPORT BIOMEDICAL DEVICES, AND APPROPRIATE THE NECESSARY CAPITAL RESERVE FUNDS AS A LOCAL FUNDING MATCH AND CONCLUDE THE PURCHASE OF THE NECESSARY EQUIPMENT

WHEREAS, the Virginia Department of Health has awarded the County a Rescue Squad Assistance Fund (R.S.A.F.) grant in the amount of \$97,540 to be used toward the replacement of its advanced life support cardiac monitor/defibrillator devices; and

WHEREAS, the Department of Fire and Life Safety has applied for a second R.S.A.F. grant to further support this project; and

WHEREAS, the Department of Fire and Life Safety has a need to replace its inventory of these devices as a result of advancing age, but more immediately, in response to recently promulgated state emergency medical service regulations that necessitate replacement if the department is to maintain its present level of medical service to the community; and

WHEREAS, Capital Reserve Funds are available this fiscal year and are not expended or obligated; and

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WHEREAS, trade-in value for existing equipment shall be applied toward the cost of the project, and another Rescue Squad Assistance Fund grant request is currently pending; and

WHEREAS, the County Administrator has determined that this purchase is necessary and desirable, and that applicable laws, ordinances, and regulations have been complied with;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this 2nd day of December, 2003, that the County Administrator be, and hereby is, authorized to accept and execute the grants awarded by the Virginia Department of Health, which shall be approved as to form by the County Attorney.

BE IT FURTHER RESOLVED, that \$97,540 and any related subsequent grant (if awarded) from the Virginia Department of Health be, and hereby is, appropriated in the General Fund for the purpose of purchasing the specified biomedical equipment.

BE IT STILL FURTHER RESOLVED, that the County Administrator be, and hereby is, authorized to conclude the purchase arrangement for eighteen advanced life support biomedical devices for a total cost of \$494,324.

On roll call the vote was:

Yea: (5) Wiggins, Shepperd, Zaremba, Noll, Burgett
Nay: (0)

Meeting Recessed. At 7:55 p.m. Chairman Burgett declared a short recess.

Meeting Reconvened. At 8:03 p.m. the meeting was reconvened in open session by order of the Chair.

PUBLIC HEARINGS

AMENDMENT TO THE YORK COUNTY CENTRALIZED PURCHASING POLICY

Mrs. Carol White, Director of Financial and Management Services, briefed the Board members on the purpose of proposed Ordinance No. 03-36 to amend the Centralized Purchasing Policy for York County and described the proposed changes.

Discussion followed regarding the reduction of the threshold at which departments can do their own competition.

Chairman Burgett then called to order a public hearing on proposed Ordinance No. 03-36 which was duly advertised as required by law and is entitled:

AN ORDINANCE TO AMEND THE CENTRALIZED PURCHASING POLICY FOR YORK COUNTY

There being no one present who wished to speak concerning the subject ordinance, Chairman Burgett closed the public hearing.

Mrs. Noll then moved the adoption of proposed Ordinance No. 03-36 that reads:

AN ORDINANCE TO AMEND THE CENTRALIZED PURCHASING POLICY FOR YORK COUNTY

WHEREAS, Sections 15.2-1231 and 2.2-4343 of the Code of Virginia authorized the Board of Supervisors to provide for the centralized competitive purchasing of all supplies, equipment, materials and commodities for all departments, officers, and employees of the County, to include the County School Board and the Board of Public Welfare or Social Ser-

vices;

NOW, THEREFORE, BE IT ORDAINED by the York County Board of Supervisors this 2nd day of December, 2003, that the centralized procurement policy for all goods and services for the County of York, as adopted October 16, 2001, be and it is hereby amended to read and provide as follows:

ARTICLE I. PURPOSE, DEFINITIONS, APPLICATION OF POLICY

1-1. Purpose.

The purpose of this policy is to increase public confidence in purchasing by York County, to provide for fair and equitable treatment of all persons involved in public purchasing by the County, to maximize the purchasing value of public funds, to foster competition in the procurement process to the maximum feasible extent, and to provide for a centralized purchasing system of quality and integrity for the County.

1-2. Effective Date.

This policy shall be in effect immediately upon its passage.

1-3. Authority.

This policy is adopted pursuant to §§ 2.2-4343(10) and 15.2-1231 of the Code of Virginia and is intended to supersede the operation of the Virginia Public Procurement Act as it applies to the procurement actions of the departments, agencies, officers, and employees subject to this policy. Those sections set forth in § 2.2-4343(12) of the Code of Virginia which, by law apply to all counties, are incorporated herein or are listed in an appendix to this policy for convenience. No other provisions of the Virginia Public Procurement Act shall apply unless specifically incorporated in this policy.

1-4. Definitions.

For purposes of this policy the following words and phrases shall have the meanings set forth below:

- (a) Affiliate - means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.
- (b) Approving Authority - "Approving Authority" shall mean the Board of Supervisors or the County School Board or the York-Poquoson Social Services Board.
- (c) Best Value - "Best value," as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs.
- (d) Board or Board of Supervisors - "Board" or "Board of Supervisors" shall mean the Board of Supervisors of York County, Virginia.
- (e) Business - means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.
- (f) Competitive Negotiation - Competitive negotiation is a method of procurement, which consists of the following elements:

1. Issuance of a written request for proposal indicating in general terms what is sought to be procured and containing or incorporating by reference the other applicable contractual terms and conditions including any unique capabilities or qualifications which will be required of the offeror.
2. Public notice of the request for proposal at least ten (10) calendar days prior to the date set for receipt of proposals by posting at the entrance to the Division of Purchasing for York County and by publication in at least one newspaper of general circulation in York County. In addition, proposals may be solicited directly from potential offerors.
3. On the basis of the evaluation factors established by this policy and by the request for proposal, at least three (3) offerors deemed to be the most qualified, responsible and suitable on the basis of initial responses shall be selected. (If less than three (3) proposals are received, then less than three (3) offerors may be so selected.) Individual discussions shall then be had with each such offeror.

Review of the proposals submitted and discussions with offerors shall be conducted by a panel established by the using agency of not less than three County representatives that shall include one representative of the Purchasing Division designated by the Purchasing Agent.

Repetitive informal interviews shall be permissible. Offerors shall be encouraged to elaborate on their qualifications, scope of work, performance data, or expertise pertinent to the proposed project as well as any alternative concepts. These discussions may encompass non-binding estimates of total project costs, including, where appropriate, design, construction, and life cycle costs. Methods to be used in arriving at a price for services may also be discussed. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. Price of service may be discussed and considered but will not be the sole determining factor in concluding negotiations.

After negotiations have been conducted with each offeror so selected, the offeror shall be selected which in the opinion of the panel has made the best proposal and the contract shall be offered to that offeror. Should the panel, after the initial submission of proposals, determine in writing that only one offeror is fully qualified, or that one offeror is clearly more qualified than the others under consideration, a contract may be negotiated and awarded to that offeror without further delay. A copy of such written determination shall be provided to the Purchasing Agent and to the approving authority when approval by other than the Purchasing Agent is required.

When the terms and conditions of multiple awards are so provided for in the request for proposal, awards may be made to more than one offeror.

(Note that the procedure for competitive negotiation for the procurement of professional services over \$30,000 differs from the one defined here. See Section 2-3(f) of this Policy.)

- (g) Competitive Sealed Bidding - Competitive sealed bidding is a method of procurement which includes the following elements:

1. Issuance of a written invitation to bid containing or incorporating by reference specifications and contractual terms and conditions applicable to the procurement. When it is impractical to prepare initially a purchase description to support an award based on price, an invitation to bid may be issued requesting submission of unpriced offers to be followed by an invitation to bid limited to those bidders whose offers have been qualified

under the criteria set forth in the first solicitation.

2. Public notice of the invitation to bid at least ten (10) calendar days prior to the date set for receipt of bids by posting at the entrance to the Division of Purchasing for York County and by publication in at least one newspaper of general circulation in York County. In addition, bids may be solicited directly from potential offerors.
 3. Public opening and announcement of all bids received.
 4. Evaluation of the bids based on requirements set forth in the invitation and the provisions of this policy.
 5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple bids are so provided for in the invitation to bid, awards may be made to more than one bidder. In the event only one bid is received and the Purchasing Agent in consultation with the using agency makes a determination that it would not be in the best interest of the County to re-bid the procurement, such determination shall be in writing and shall be provided to the approving authority when approval by other than the Purchasing Agent is required.
- (h) Construction – “Construction” shall mean building, altering, repairing, improving or demolishing any structure, building, or roadway, and any draining, dredging, excavation, grading or similar work upon real property.
- (i) County – “County” shall mean the County of York, Virginia, a political subdivision of the Commonwealth of Virginia, and shall include all other departments, public bodies corporate, agencies, sanitary districts and officers of the County to which this policy applies. It shall also include any other entity that has chosen to participate in this policy and has entered into a cooperative procurement agreement with the County.
- (j) County Administrator – “County Administrator” shall mean the County Administrator of York County, or, a duly authorized designee.
- (k) Goods – “Goods” shall mean all material, equipment, supplies, printing, and automated data processing hardware and software.
- (l) Offeror – “Offeror” unless expressly indicated otherwise, shall mean both a bidder, i.e., a person who submits a competitive sealed bid in response to an Invitation to Bid, or a person who submits a proposal in response to a Request for Proposals.
- (m) Purchasing Agent – “Purchasing Agent” shall mean the County Administrator of York County, Virginia, or any person designated by the County Administrator to implement all or a portion of this policy.
- (n) Reverse Auctioning - means a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.
- (o) Services – “Services” shall mean any work performed by an independent contractor wherein the service rendered does not consist primarily of the acquisition of equipment or materials or the rental of equipment, materials, or supplies.
- (p) Using Agency – “Using Agency” shall mean any officer, employee, or other entity of the County requiring any goods, services, insurance, or construction to be

procured under the policies and procedures established by this policy.

1-5. Application of Policy.

- (a) This policy is intended to provide for centralized competitive purchasing and covers all purchasing by all departments, officers, elements and employees of the County, including specifically, but not limited to, the York County School Board, the York-Poquoson Department of Social Services, Constitutional Officers, and the York County Library. This policy is not intended to require review or approval by the Board of specific items procured by the York County School Board, the York-Poquoson Department of Social Services, the Constitutional Officers, the York County Library, or public bodies who have by agreement become subject to this policy, when sufficient funds have been appropriated to such entity or officer for the purpose of the procurement and this policy has been followed. The Purchasing Agent with regard to such entities and officers shall, however, by signing all purchase orders for such procurements prior to the placement of a firm order, certify compliance with this policy and procedures issued pursuant to it. The Purchasing Agent shall not execute a purchase order if such procurement has not been in compliance with this policy and the procedures developed pursuant to it.
- (b) This policy shall apply to all purchases or contracts for the purpose of procuring goods, services, insurance, and construction involving the expenditure of public funds.
- (c) When any procurement involves the expenditure of state or federal assistance, grant, loan, or contract funds the procurement shall be conducted in accordance with any mandatory federal or state requirements which are not reflected in this policy if the receipt of such funds is conditioned upon compliance with the mandatory procedures.
- (d) This policy shall not prohibit compliance with the terms and conditions of any grant, gift, or bequest that are otherwise consistent with law.
- (e) This policy shall not apply to contracts existing on its effective date and such contracts may be performed or extended according to their terms.

1-6. Cooperative Procurement.

The Purchasing Agent may administer cooperative procurement agreements with public bodies not otherwise covered by this policy, subject to the terms and conditions of such agreement as may be authorized by the Board. Except for contracts for professional services, the County may purchase from another public body's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies. Any public body that enters into a cooperative procurement agreement with a county, city, or town whose governing body has adopted alternative policies and procedures pursuant to subdivisions 9 and 10 of § 2.2-4343 shall comply with the alternative policies and procedures adopted by the governing body of such county, city, or town.

1-7. Contracts or Purchases Made in Violation of this Policy.

Except as provided herein, no official, elected or appointed, nor any employee, shall purchase or contract for any goods, services, insurance, or construction. Any purchase or contract made contrary to the provisions of this policy shall be void, and the County will not be bound thereby. Any person who makes such a procurement or disposition may be personally liable therefore to the vendor or purchaser of the goods, services, or construction involved.

ARTICLE II. PURCHASING AGENT; COMPETITION REQUIREMENTS

2-1. Delegation of Authority to Purchasing Agent.

The Purchasing Agent shall serve as the principal public purchasing official for the County and shall be responsible, under the supervision of the Board, for the procurement of all goods, services, insurance, and construction as well as the management and disposal of surplus materials. The Purchasing Agent may delegate authority to a duly authorized agent or agents.

The authority of the Purchasing Agent shall specifically, but without limitation, include the authority to select the method of procurement to be used and the authority to negotiate and execute contracts on behalf of the County for any and all procurements or for the disposition of materials. The Purchasing Agent shall conduct all purchasing activities in accordance with the provisions of this policy. The Purchasing Agent may not delegate approval of the use of competitive negotiation, as required by Subparagraph (h) of Section 2-3 of this policy, except in the case of purchases not exceeding \$5,000.

2-2. Adoption of Procedures.

The Purchasing Agent shall prepare forms and administrative regulations for the purpose of implementing the provisions of this policy. Such forms and regulations shall be deemed a part of this policy and shall direct the actions of those to whom this policy applies. A copy of such forms and administrative regulations shall be provided to the Board annually, along with a summary of any administrative changes made during the preceding year. The Board shall approve the promulgation of those regulations.

2-3. Competition Requirements.

Prior to any purchase of goods, insurance, services or construction, reasonable price competition is desired. Except as otherwise provided in this policy the competitive pricing methods set forth below shall be followed:

- (a) For purchases in the amount of \$1,000 or less, prices are to be compared by telephone, catalogue, or by other appropriate means. No permanent documentation of price comparison is required.
- (b) For purchases in excess of \$1,000 and not greater than \$5,000, telephone calls shall be placed to at least two suppliers of the item. At a minimum, oral quotes shall be obtained and written documentation of the telephone solicitation shall be made, showing the item requested, date, time, company name, price quoted, and individual making quote. Written requests for quotation may also be used.
- (c) For purchases in excess of \$5,000 but not greater than \$15,000, at least three (3) suppliers shall be contacted. Telephone or written requests for quotations may be used.
- (d) For purchases in excess of \$15,000 but not greater than \$30,000, written quotes are required and, at least three (3) suppliers shall be contacted. Written requests for quotations may be used and must be posted on the County's Purchasing web-site.
- (e) When a procurement transaction is made under (a), (b), or (c) above, the purchase shall be made from the supplier quoting the lowest price, or best value, unless the Purchasing Agent, using the evaluation factors in this policy for competitive negotiation or competitive sealed bidding as the case may be, documents in writing a determination that, in the best interest of the County, such purchase should be made from another supplier quoting a higher price. Such determination for purchases in excess of \$5,000 shall be approved by the County Administrator or the approving authority's designee.
- (f) Purchases that in the aggregate or in the sum of all phases are expected to be in excess of \$30,000 shall be made by either competitive sealed bidding or competitive negotiation and must be posted on both the County's web-site and the Commonwealth's procurement web-site (eVA).

- (g) Purchases of professional services, as that term is defined in § 2.2-4301 of the Code of Virginia, when the cost of such services is expected to exceed \$30,000, shall be made in accordance with subparagraph 3.a. under the definition of competitive negotiation as set forth in § 2.2-4301 of the Code of Virginia.
- (h) The Purchasing Agent shall have the authority to use competitive negotiation to procure any goods, services or insurance, after documenting in advance the basis therefore in writing, as required by § 2.2-4303.C., Code of Virginia. Insurance may be procured through a licensed agent or broker selected in the manner provided for the procurement of things other than professional services in subdivision 3(b) of the definition of “competitive negotiation” in § 2.2-4301, Code of Virginia, if the basis for doing so is approved by the Board. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the Purchasing Agent in writing, after making the findings required by § 2.2-4303(D), Code of Virginia:
 - (1) contracts for the alteration, repair, renovation or demolition of buildings when the cost of the contract will not exceed \$500,000; or
 - (2) contracts for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property.
- (i) The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by reverse auctioning.

Nothing in this policy shall prevent the use of competitive sealed bidding or competitive negotiation in procurements under \$30,000, if deemed appropriate by the Purchasing Agent.

2-4. Exceptions to Competition Requirements.

Section 2-3 of this policy shall not apply and no price competition other than specified in this section is required in the following procurement transactions:

- (a) The purchase of items under procurement contracts made available to the County by the Commonwealth of Virginia or to purchases made available to the County through other state, federal, or public entities;
- (b) Contracts for legal services, expert witnesses, and other services associated with litigation, regulatory proceedings, or other legal matters;
- (c) Purchases for special police work when the Sheriff certifies that the purchases are needed for undercover law enforcement operations;
- (d) Contracts and purchases by the Industrial Development Authority with respect to any item of cost of an “authority facility” or “facilities” as defined in § 15.2-4902 of the Code of Virginia;
- (e) Upon a determination by the Purchasing Agent in writing, which writing shall state the basis for such determination, that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competition. The Purchasing Agent shall conduct appropriate negotiations as to price, delivery, and terms. A record of the sole source procurement shall be maintained listing the contractor’s name, the amount, and qualifying circumstances. The Purchasing Agent shall provide a copy of the written determination to the County Administrator or other appropriate Approving Authority when approval is required by Section 3-17 of this policy.

- (f) In cases of emergency provided, however, such procurement shall be made with such competition as is practicable under the circumstances. A written statement by the Purchasing Agent of the basis for the emergency and for the selection of the particular supplier shall be included in the papers relating to the procurement. The Purchasing Agent shall develop appropriate procedures regarding emergency purchases. The term "emergency" as used in this subparagraph means a situation where there exists a threat to public health, welfare, or safety or when an unforeseen circumstance causes disruption of an essential service.
- (g) Agreements or contracts entered into between the County and private parties for cost participation or cost sharing in the extension or construction of public utilities or the provision of other public services. Any such agreements must be approved by the Board.
- (h) Travel advances, travel reimbursements, or travel expenses;
- (i) Meals, beverages, entertainment, awards, or similar purchases in conjunction with official county functions or meetings.
- (j) Payments for services to jurors, board and commission members, sports officials, and medical examiners;
- (k) Contracts for local telephone service (excepting cellular and paging services), or other regulated utility services;
- (l) Interdepartmental or interagency expenses or purchases;
- (m) Contracts of employment;
- (n) Advertising and legal notices;
- (o) Dues and subscriptions;
- (p) Employee educational expenses;
- (q) Textbooks, library books, and other library items for circulation to, or use by students, acquired by the public schools;
- (r) Public library books and other library items for circulation to, or use by the public;
- (s) Services rendered to or payments received by clients of the Department of Social Services;
- (t) Foster home placements;
- (u) Treatment services provided to clients by the Department of Community Services;
- (v) Clinical supervision services for counselors in County employment;
- (w) Occupational therapy, physical therapy, student evaluations;
- (x) Mail and mail-related costs (e.g. postage meter expense, stamps, etc.);
- (y) Instructional/specialty educational materials, promotional items, Crafts.

2-5. Purchases at Auction.

Notwithstanding any other provision of this policy, upon a determination by the Purchasing Agent that the purchase of certain designated goods from a public auction sale is in the best interest of the County, such items may be purchased at auction sale. The Purchasing Agent shall document the basis for any such determination.

2-6. Documentation Required.

Documentation of competitive pricing or other documentation required by this policy, including a complete copy of the solicitation for competitive bids or proposals, shall be retained along with other papers related to the procurement in the office of the Division of Purchasing. Such documentation shall be retained until the acquisition of goods is completed or the services have been rendered and after such time may be destroyed in accordance with County and State procedures governing records retention.

ARTICLE III. ADMINISTRATIVE PROVISIONS

3-1. Division of Requirements.

No using agency shall artificially divide contract requirements so as to avoid any dollar limitations set forth in this policy.

3-2. Bid List.

The County does not accept the responsibility for maintaining a bid list or the responsibility for the failure of any competitor to receive a solicitation directly from the County. The Purchasing Agent, may for the convenience of the County, maintains a bidders list containing the names of prospective offerors. The maintenance of such list shall not be construed as the acceptance of an obligation to notify any or all of the prospective offerors on such list of procurement transactions by the County.

3-3. Cost Plus Percentage of Cost Contracts Prohibited.

Except in the case of an emergency affecting the public health, safety or welfare, no contract shall be awarded on the basis of cost plus a percentage of cost. This paragraph shall not apply to contracts of insurance. Public contracts may be awarded on any other basis.

3-4. Modification of Contracts.

Contracts entered into by the County may include provisions for modification of the contract during performance but no fixed price contract may be increased by more than 10 percent of the amount of the contract or \$30,000, whichever is greater, without prior approval by the Board or other approving authority. Following such approval the Contract price will consist of the original Contract amount plus all such approved modifications. The time of performance for any contract shall not be extended by more than 20 percent of the original term of the contract or thirty (30) days, whichever is greater, without prior approval by the Board or other Approving Authority. Any such modifications shall not exceed appropriations available for the project. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.

3-5. Prequalification of Offerors.

The Purchasing Agent may pre-qualify prospective offerors for any solicitation. Consideration of bids or proposals may be limited to pre-qualified offerors. The opportunity to pre-qualify shall be given to any prospective offeror who has not been suspended or debarred under this policy.

- (a) Pre-qualification of prospective contractors for construction. If the Purchasing Agent chooses to pre-qualify prospective contractors for construction, an appli-

cation form shall be used which sets forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information and documents as are appropriate for an objective evaluation of all prospective contractors pursuant to such criteria.

The form shall contain a box, which the prospective contractor may check to request that all information submitted by the contractor in connection with the pre-qualification process shall be deemed a trade secret or proprietary information pursuant to subdivision B 55 of §2.2-4342(F), Code of Virginia. In all instances in which the Purchasing Agent requires pre-qualification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of pre-qualification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this section to be accomplished. At least thirty (30) days prior to the date established for submission of bids or proposals under the procurement of the contract for which the pre-qualification applies, the Purchasing Agent shall advise in writing each contractor which submitted an application whether that contractor has been pre-qualified. In the event that a contractor is denied pre-qualification, the written notification to such contractor shall state the reasons for such denial of pre-qualification and the factual basis of such reasons. The Purchasing Agent may deny pre-qualification to any contractor only if the Agent finds one of the following:

- (1) The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the public body shall be sufficient to establish the financial ability of such contractor to perform the contract resulting from such procurement;
- (2) The contractor does not have appropriate experience to perform the construction project in question;
- (3) The contractor has had judgments entered against him for the breach of contracts for construction;
- (4) The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the County without good cause. If the County has not contracted with a contractor in any prior construction contracts, the Purchasing Agent may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another locality without good cause. In all instances, any such substantial non-compliance shall be documented;
- (5) The contractor has been convicted within the past five years of a felony involving moral turpitude regarding any procurement of or performance of a construction contract;
- (6) The contractor failed to provide to the Purchasing Agent in a timely manner any information requested relevant to subdivisions 1 through 5 above.

- (b) Pre-qualification for prospective offerors for other than construction solicitations.

If the Purchasing Agent chooses to prequalify prospective offerors for procure-

ments for other than construction, the procedure set forth in subsection (a) above shall be followed, except that reasonable notice in writing of less than thirty (30) days prior to the date established for the submission of bids or proposals may be given to prospective offerors as to whether they are deemed pre-qualified or not. The Purchasing Agent may include in the application form for the pre-qualification of prospective offerors of this type reasonable criteria in addition to those set forth in subsection (a) above for the pre-qualification evaluation.

(c) Pre-qualification generally.

In pre-qualifying offerors pursuant to either (a) or (b) above:

- (1) Pre-qualification of a prospective offeror shall not constitute a conclusive determination that a offeror is responsible, and such offeror may be rejected as not responsible on the basis of subsequently discovered information.
- (2) The failure of a prospective offeror to pre-qualify with respect to a given procurement shall not bar the offeror from seeking pre-qualification as to future procurements or from bidding or submitting proposals on procurements which do not require pre-qualification.

A decision by the Purchasing Agent denying pre-qualification shall be final and conclusive unless the offeror appeals the decision by instituting legal action pursuant to § 2.2-4364, Code of Virginia.

3-6. Pre-Bid Conferences.

When deemed necessary by the Purchasing Agent, a pre-bid conference with prospective bidders may be held after draft specifications have been prepared. Such conferences are for the purpose of detecting unclear provisions and tend to widen competition by removing unnecessarily restrictive language. After such conference the final specifications shall be prepared.

3-7. Comments or Questions Regarding Invitations for Bid or Requests for Proposal.

Once invitations to bid or requests for proposal have been advertised, should a prospective offeror find any discrepancy in, or omissions from, the specifications, request for proposal, or other contract documents, or should he be in doubt as to their meaning, he shall at once notify the specified contact person who will send written instructions to all bidders. The County will not be responsible for any oral instructions.

3-8. Bonds.

In addition to any bonds which may be required by state law, the Purchasing Agent may, in the Agent's sole discretion, require a bid, performance, or payment bond or other specified surety arrangement in any procurement solicitation, provided that for construction or renovation contracts in excess of \$100,000, performance and payment bonds shall be required in the amount of the contract. The requirement for such surety shall be clearly stated in the solicitation.

3-9. Offeror's Responsibilities.

By submitting a bid or proposal an offeror agrees and warrants that it has examined all contract documents and, if appropriate, the subject of the contract, and where the specifications require a given result to be produced, that the specifications are adequate and the required results can be produced under the specifications in the contract. Omissions from the specifications shall not relieve the offeror from the responsibility of complying with the general terms and intent of the contract as indicated by the specifications. Once the award has been made, failure to have read all the conditions, instructions, and specifications of the contract will not

be cause to alter the original contract or proposal, or for the offeror to request additional compensation.

3-10. Signatures on Offers or Bids.

The firm, corporation, or individual name of the offeror must be signed to any proposals or bids submitted. In the case of a corporation, the title of the officer signing must be stated and each officer must be duly authorized. In the case of a partnership, the signature of at least one of the partners must follow the firm name using the term "member of the firm" or "general partner."

3-11. Withdrawal or Cancellation of Bids.

Except as provided in the second paragraph of this section, an offeror may withdraw or cancel a bid or proposal at any time prior to the date set for opening. After such time the offeror or bidder may not withdraw for a period of sixty (60) calendar days. Any offeror may be required to clarify its offer or bid or acknowledge by written confirmation that the minimum requirements of the specifications are included in the offeror's proposal.

The withdrawal of bids for construction contracts shall be handled in the manner specified in the advertisement for bids in accordance with the provisions of § 2.2-4330.A. of the Code of Virginia.

3-12. Evaluation of Sealed Bids.

When competitive sealed bidding is used, the following factors shall be considered, in addition to price, when determining the lowest responsible bidder and the responsiveness of the bid:

- (a) The ability, capacity, and skill of the bidder to perform the contract or provide the service required.
- (b) Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference.
- (c) The character, integrity, reputation, judgment, experience, and efficiency of the bidder.
- (d) The quality of performance of previous contracts or services.
- (e) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service.
- (f) The sufficiency of financial resources and ability of the bidder to perform the contract or provide the service.
- (g) The quality, availability and adaptability of the goods or services to the particular use required.
- (h) The ability of the bidder to perform future maintenance and service for use of the subject of the contract.
- (i) The number and scope of conditions attached to the bid.
- (j) Any other condition or criteria included in the request for bids or the instructions to bidders.

3-13. Evaluation of Proposals Under Competitive Negotiation.

When competitive negotiation is the method of procurement selected, the following factors shall be considered in a descending order of importance in determining the most qualified firm or individual:

- (a) Any special qualifications or requirements set forth in the proposal documents.
- (b) Qualifications of the project manager and project teams.
- (c) Overall qualifications and experience of the firm and any subcontractors to be used.
- (d) Quality of the content of the proposal and its responsiveness to the request for proposal.
- (e) The sufficiency of financial resources and ability of the bidder to perform the contract or provide the services.
- (f) Financial ability of the firm to perform future maintenance and service for the subject of the contract.
- (g) The location of the office that will have the responsibility for providing the services and the ability of the offeror to respond quickly to requests and requirements of the County.
- (h) Cost estimates (which may or may not be required at the time of submission of the proposal, depending upon the circumstances).

3-14. Tie Bids.

If more than one bid or proposal received is for the same total amount or unit price, quality and service being equal, the award shall be decided by lot unless goods, services and construction produced in the County or provided by persons, firms or corporations having principal places of business in the County, if such a choice is available; unless § 2.2-4324 applies.

3-15. Negotiations When Bids Exceed Available Funds.

If the lowest acceptable bid exceeds available funds, the Purchasing Agent may negotiate with the bidder to obtain a contract price within available funds. The negotiations shall be confined to a reduction in the contract price and shall not deal with changes in the contract requirements.

3-16. Cancellation or Rejection of Bids.

An invitation to bid, a request for proposal, any other solicitation, or any and all bids or proposals received may be canceled or rejected when the Purchasing Agent determines that it is in the best interest of the County to do so. The reasons therefore shall be made a part of the contract file. Any bid which is incomplete, conditional, obscure, or which is not in conformance with the specifications may be rejected or any such irregularities may be waived at the option of the Purchasing Agent provided they do not affect the price, quality, quantity, or delivery schedule for the goods, services, or construction to be procured.

No bidder shall be permitted to alter, modify or amend its bid after the time fixed for submission of bids, except as provided in Section 3-11 of this Policy.

No bid received after the time fixed for submission of bids shall be opened or considered.

No statement or notation whatsoever, written, printed, typed or otherwise set out on any bid or offer envelope, including any addition or deduction in contract price, shall be recognized or considered in the review and tabulation of any bid or offer or for any other purpose.

3-17. Approvals.

Except as provided for emergency purchases, all purchases in excess of \$10,000 shall be specifically approved by the County Administrator, or the Approving Authority's designee, prior

to the placement of a firm order. Purchases in excess of \$30,000 shall be specifically approved by the Board of Supervisors or the appropriate Approving Authority prior to placement of a firm order (excepting the purchase of vehicles for the Department of General Services' Vehicle & Equipment Maintenance Division, wherein the cost of a single unit does not exceed \$30,000; such purchases, subject to fund availability, may be made without Approving Authority). Emergency purchases may be approved after the fact. The request for approval shall identify the method of price competition used in the procurement.

This policy is not intended to require review or approval by the Board of specific items procured by the York County School Board, the York-Poquoson Department of Social Services, the Constitutional Officers, the York County Library, or public bodies who have by agreement become subject to this policy, when sufficient funds have been appropriated to such entity or officer for the purpose of the procurement and this policy has been followed. The Purchasing Agent with regard to such entities and officers shall, however, by signing all purchase orders for such procurements prior to the placement of a firm order, certify compliance with this policy and procedures issued pursuant to it. The Purchasing Agent shall not execute a purchase order if such procurement has not been in compliance with this policy and the procedures developed pursuant to it.

3-18. Contract Requirements and Legal Review.

The terms and conditions of procurements in excess of \$15,000 shall be reviewed and approved as to form by the County Attorney prior to issuance by the Purchasing Agent. Contracts signed by all parties and containing, or incorporating by reference, all applicable terms and conditions shall be required for procurements of services or construction in excess of \$25,000.

Formal Invitations for Bids (IFB) and Requests for Proposals (RFP) for procurement of construction or services, when required, shall be reviewed by the County Attorney prior to advertising. Whenever a contract, signed by all parties and containing, or incorporating by reference, all applicable terms and conditions is to be used in a procurement, it and all amendments and changes thereto shall be approved as to form by the County Attorney.

3-19. Decisions of Purchasing Agent or Board Final.

All offerors are subject to the decision of the Purchasing Agent as to the quality of what is offered, responsiveness of the offer, responsibility of the offeror, and the qualifications of the offeror. The Purchasing Agent will evaluate bids or proposals and in all cases the decision made shall be final. Every offeror submitting a bid or proposal agrees, as a condition precedent to the submission, to abide by the decisions of such official and all of the provisions of this policy.

Following execution of a contract as the result of a competitive negotiation, an unsuccessful offeror may request a "de-briefing" of a specific procurement action. Such request shall be submitted in writing to the Purchasing Agent not more than thirty (30) days following the action of the approving authority. The Purchasing Agent shall meet with the offeror within fifteen (15) days of the request to discuss how the offeror may improve proposals for future work with the County.

3-20. Debarment and Suspension.

After giving fifteen (15) days' written notice and providing an opportunity to be heard, the Purchasing Agent, after consultation with the County Attorney, is authorized to debar any offeror for cause from consideration for the award of contracts. The debarment shall not be for a period of more than three (3) years.

After consultation with the County Attorney, the Purchasing Agent is authorized to suspend an offeror from consideration for the award of contract if there is probable cause to believe that the offeror has engaged in any activity that might lead to debarment. The suspension shall not be for a period exceeding three (3) months. Notice of any debarment or suspension shall be provided to the Board, and to the contractor, stating the reasons for the action taken.

The causes for any such debarment or suspension may include, but are not necessarily limited

to, the following:

- (a) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract;
- (b) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense of moral turpitude indicating a lack of business or personal integrity or honesty which currently, seriously, and directly affects responsibility as a County offeror;
- (c) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- (d) Violation of contract provisions of a character which is regarded by the Purchasing Agent to be so serious as to justify a debarment action including, but not limited to:
 - (1) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in a contract with the County; or
 - (2) A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts.
- (e) Any other cause the Purchasing Agent determines to be so serious and compelling as to affect responsibility as a County contractor including debarment by another governmental entity.

3-21. Freedom of Information Act.

With the following exceptions, procurement documents are subject to the Virginia Freedom of Information Act:

- (a) Cost estimates relating to a proposed procurement transaction prepared by or for the County shall not be open to public inspection.
- (b) Bid and proposal records shall be open to public inspection only after award of the contract. Any bidder or offeror may be allowed to inspect the bid or proposal records after bid opening or after the evaluation and negotiation of proposals are completed, and prior to award unless the County decides not to accept any bids or not to accept any of the proposals and to reopen the contract.
- (c) Trade secrets or proprietary information submitted to the County are not subject to disclosure if requested by the person submitting such information prior to or upon submission of the data or other materials. Any such request must identify what is to be protected and state the reasons therefor.
- (d) Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions imposed by the Purchasing Agent to insure security and integrity of the records.

3-22. Claims.

Contract claims, if not otherwise provided for in such contract, shall be submitted to the Board in accordance with the provisions of §§ 15.2-1245, et seq., Code of Virginia, or, if appropriate, to the County School Board pursuant to §§ 22.1-122, and 15.2-1245, et seq., Code of Virginia, mutatis mutandis.

ARTICLE IV. DISPOSITION OF SURPLUS PROPERTY

4-1. Sale of Surplus Property.

All using agencies shall, upon request, submit to the Purchasing Agent a report of all surplus, worn out, or obsolete items, which should be disposed of. The Purchasing Agent shall have the authority to transfer such surplus stock to other using agencies. All property not so transferred shall be exchanged, traded in on new items, salvaged, or sold as deemed appropriate by the Purchasing Agent. Notwithstanding the foregoing, any library books purchased for circulation by the York County public Library which have been declared to be surplus by the York County Librarian may be donated by the Librarian to the York County Friends of the Library, or to any similar organization the main function of which is to support the activities of the York County public library system. The Librarian shall keep a record of all books so donated for review upon request by the Purchasing Agent.

In general, sales may be made at public auction, after prior advertisement in a newspaper of general circulation in the County of York, or sold on an appropriate web-site (at the sole discretion of the Purchasing Agent) to the highest bidder. Individual items may be scrapped, if in the opinion of the Purchasing Agent, the cost of storage and sale exceeds the value of the item. If the value of any individual item is estimated to exceed \$10,000, sealed bids shall be solicited by public notice inserted at least once in a newspaper of general circulation in York County at least ten (10) calendar days prior to the final date for the submission of sealed bids. Bids may also be solicited for the disposition of any surplus item if the Purchasing Agent determines it to be in the best interest of the County. The Board, upon the request of the Purchasing Agent, may make a special dispensation of any individual item if, in the opinion of the Board, such dispensation is in the public interest.

4-2. Participation at County Auctions.

County and School employees are prohibited from bidding on surplus property sold at auction (traditional auction or on-line). Purchasing staff are prohibited from purchasing any surplus property whatever disposal method is used.

ARTICLE V. PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE ACT

5-1 Introduction

The Public-Private Education Facilities and Infrastructure Act of 2002 (the "PPEA") grants the County of York (the "County"), a responsible public entity as defined in the PPEA, the authority to enter public-private agreements for the development of a wide range of projects for public use if the County determines there is a public need for the project and that private involvement may provide the project to the public in a timely or cost-effective fashion. Individually negotiated comprehensive agreements between an operator, as defined in the PPEA, and the County will define the respective rights and obligations of the County and the private operator. Although guidance with regard to the application of the PPEA is provided herein, it will be incumbent upon the County and all private entities to comply with the provisions of the PPEA.

In order for a project to come under the PPEA, it must meet the definition of a "qualifying project." The PPEA contains a broad definition of qualifying project that includes public buildings and facilities of all types; for example:

- (a) An education facility, including, but not limited to, a school building (including any stadium or other facility primarily used for school events), any functionally-related and subordinate facility and land to a school building, and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education;
- (b) A building or facility for principal use by any public entity;

- (c) Improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity;
- (d) Utility and telecommunications and other communications infrastructure;
- (e) A recreational facility; or
- (f) Certain service contracts.

The PPEA establishes requirements to which the County must adhere when reviewing and approving proposals received pursuant to the PPEA. In addition, the PPEA specifies the criteria that must be used to select a proposal and the contents of the comprehensive agreement detailing the relationship between the County and the private entity.

The County Administrator is authorized to designate a working group to be responsible for evaluating proposals and negotiating the comprehensive agreement. In the case of any project proposed for use by the York County School Board, the working group shall include representatives of the School Division.

The individual designated by the County Administrator to serve as the point of contact for implementation of procedures, to receive proposals submitted under the PPEA and to respond to inquiries regarding the PPEA or this adopted policy shall be the designated County Purchasing Agent.

5-2. General Provisions

- (a) Proposal Submission - A proposal may be either solicited by the County or delivered by a private entity on an unsolicited basis. In either case, the proposal shall be clearly identified as a "PPEA Proposal". To be considered, one original and nine (9) copies of any unsolicited proposal must be submitted along with the applicable fee to the Purchasing Agent, 120 Alexander Hamilton Boulevard, P.O. Box 532, 23690, Yorktown, Virginia. Proposers may be required to follow a two-part proposal submission process consisting of a conceptual phase and a detailed phase, as described herein. The County may discontinue its evaluation of any proposal at any time during the conceptual or detailed phase.

The PPEA allows private entities to include innovative financing methods, including the imposition of user fees or service payments, in a proposal. Such financing arrangements may include the issuance of debt instruments, equity securities, or other securities or obligations. Proposals may include, if applicable, the portion of the tax-exempt private activity bond limitation amount to be allocated annually to the Commonwealth of Virginia pursuant to the Economic Growth and Tax Relief Reconciliation Act of 2001 for the development of education facilities using public-private partnerships.

Proposals should be prepared simply and economically, providing a concise description of the proposer's capabilities to complete the proposed qualifying project and the benefits to be derived from the project by the County. Project benefits to be considered are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the project. Proposals also should include a comprehensive scope of work and a financial plan for the project, containing enough detail to allow an analysis by the County of the financial feasibility of the proposed project. Any facility, building, infrastructure, or improvement included in a proposal shall be identified specifically or conceptually. The County may request, in writing, clarification to the submission.

The PPEA is intended to encourage proposals from the private sector that offer the provision of private financing in support of the proposed public project and the assumption of commensurate risk by the private operator, but also benefits to the operator through innovative approaches to project financing, development and use. However, while substantial private sector involvement is encouraged, qualifying facilities will still be devoted primarily to public use and typically involve facilities critical to the public health,

safety and welfare. Accordingly, staff shall continue to exercise full and proper due diligence in the evaluation and selection of operators for these projects. In this regard, the qualifications, capabilities, resources, and other attributes of a prospective operator and its whole team shall be carefully examined for every project. In addition, operators proposing projects shall be held strictly accountable for representations or other information provided regarding their qualifications, experience, or other contents of their proposals, including all specific aspects of proposed plans to be performed by the operator.

- (b) **Affected Jurisdictions** - Any private entity requesting approval from or submitting a conceptual or detailed proposal to the County must provide any affected jurisdiction with a copy of the private entity's request or proposal by certified mail, express delivery or hand delivery within 5 business days after the County decides to accept the proposal. Any affected jurisdiction shall have 60 days from the receipt of the request or proposal to submit written comments to the County and to indicate whether the proposed qualifying project is compatible with the (i) jurisdiction's comprehensive plan, (ii) jurisdiction's infrastructure development plans, and (iii) capital improvements budget or other government spending plan. Comments received within the 60-day period shall be given consideration by the County.
- (c) **Proposal Review Fee** - The PPEA authorizes the County to charge a reasonable fee to cover the costs of processing, reviewing, and evaluating proposals.
 - (1) A fee of \$1,000 shall accompany the initial proposal to cover staff time to determine whether it is a qualifying project with a reasonable expectation of satisfying the criteria of 56-575.4 C of public need or benefit, reasonable estimated cost, and timely acquisition of the project. Such sum shall be paid with certified funds.
 - (2) If the County determines that the proposal is a qualifying project as described above, and to proceed with publication and further stages of review, the County may impose additional review fees if the County reasonably anticipates incurring costs in excess of the initial fee. Additional fees may include the reasonable cost of staff time, attorney's fees, and fees for financial, engineering, and other necessary advisors or consultants. The County will notify the private entity of the amount of such additional fees as and when it anticipates incurring such costs. The private entity shall pay such additional fees before the County will continue to process, review, and evaluate the proposal.

The County will refund any portion of fees paid in excess of its costs associated with evaluating the proposal.

Freedom of Information Act - Generally, proposal documents submitted by private entities are subject to the Virginia Freedom of Information Act ("FOIA"). In accordance with § 2.2-3705 A 56 of FOIA, such documents are releasable if requested, except to the extent that they relate to (a) confidential proprietary information submitted to the County under a promise of confidentiality or (b) memoranda, working papers or other records related to proposals if making public such records would adversely affect the financial interest of the County or the private entity or the bargaining position of either party. Proprietary, commercial or financial information, balance sheets, financial statements, or trade secrets provided by a private entity as evidence of its qualifications are not considered procurement records. Once a comprehensive agreement has been entered into, and the process of bargaining of all phases or aspects of the comprehensive agreement is complete, the responsible public entity shall make the procurement records available upon request in accordance with § 2.2-4342.

When the private entity seeks a promise of confidentiality from the County as to proprietary information under (a) above, the private entity must (i) invoke the exclusion when the data or materials are submitted to the County or before such submission, (ii) identify the data and materials for which protection from disclosure is sought, and (iii) state why the exclusion from disclosure is necessary. The County will not protect any

portion of a proposal from disclosure if the entire proposal has been designated confidential by the proposer without reasonably differentiating between the proprietary and non-proprietary information contained therein.

Upon receipt of a request that designated portions of a proposal be protected from disclosure as confidential and proprietary, the County shall determine whether such protection is appropriate under applicable law and, if appropriate, the scope of such appropriate protection, and shall communicate its determination to the private entity. If the determination regarding protection or the scope thereof differs from the private entity's request, then the County will accord the private entity a reasonable opportunity to clarify and justify its request. Upon a final determination by the County to accord less protection than requested by the private entity, the private entity may withdraw its proposal.

Use of Public Funds - Virginia constitutional and statutory requirements and County ordinances and policies as they apply to appropriation and expenditure of public funds apply to any comprehensive agreement entered into under the PPEA. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds shall be incorporated into planning for any PPEA project or projects and shall be in compliance with the County's Fiscal Policies as adopted by the Board.

Applicability of Other Laws - Nothing in the PPEA shall affect the duty of the County to comply with all other applicable law not in conflict with the PPEA. Article 6 Ethics in Public Contracting of the Virginia Public Procurement Act (the VPPA) is hereby incorporated herein by reference. Otherwise, the applicability of the VPPA is as set forth in the PPEA and herein.

Solicited Proposals

The County may invite bids or proposals from private entities to acquire, design, construct, improve, renovate, expand, equip, maintain or operate qualifying projects. The County may use a two-part process consisting of an initial conceptual phase and a detailed phase. The County will set forth in the solicitation the format and supporting information that is required to be submitted, consistent with the provisions of the PPEA.

The solicitation will specify, but not necessarily be limited to, information and documents that must accompany each proposal and the factors that will be used in evaluating the submitted proposals. The solicitation will be posted in such public areas as are normally used for posting of the County's notices, including the County's website. The solicitation will also contain or incorporate by reference other applicable terms and conditions, including any unique capabilities or qualifications that will be required of the private entities submitting proposals. Pre-proposal conferences may be held as deemed appropriate by the County.

Unsolicited Proposals

The PPEA permits the County to receive and evaluate unsolicited proposals from private entities to acquire, design, construct, improve, renovate, expand, equip, maintain, or operate a qualifying project.

The County may publicize its needs and may encourage or notify interested parties to submit proposals subject to the terms and conditions of the PPEA. When such proposals are received without issuance of a solicitation, the proposal shall be treated as an unsolicited proposal.

To ensure the County receives the best value for any qualifying project, the County will seek and encourage competing unsolicited proposals.

Decision to Accept and Consider Unsolicited Proposal; Notice

- a. Upon receipt of any unsolicited proposal or group of proposals and payment of any required fee by the proposer or proposers, the County will determine whether to accept the unsolicited proposal for publication and conceptual-phase

consideration. If the County determines not to accept the proposal and not to proceed to publication and conceptual-phase consideration, staff will return the proposal, together with all fees and accompanying documentation, to the proposer.

- b. If the County chooses to accept an unsolicited proposal for conceptual-phase consideration, staff shall post a notice in a public area regularly used by the County for posting of public notices and on the County website for a period of not less than 45 days. The County shall also publish the same notice at least once in a newspaper of general circulation in the County and advertise the notice in the Virginia Business Opportunities publication to notify any parties that may be interested in submitting competing unsolicited proposals. Interested parties shall have adequate time as specified in the notice, but in no event less than 45 days from the date the notice is published to submit competing unsolicited proposals. The notice shall state that the County (i) has received and accepted an unsolicited proposal under the PPEA, (ii) intends to evaluate the proposal, (iii) may negotiate a comprehensive agreement with the proposer based on the proposal, and (iv) will accept for simultaneous consideration any competing unsolicited proposals that comply with the procedures adopted by the County and the PPEA. The notice also shall summarize the proposed qualifying project or projects, and identify their proposed locations.

Initial Review at the Conceptual Stage

- a. Only proposals complying with the requirements of the PPEA that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format will be considered by the County for further review at the conceptual stage. Unsolicited proposals at the conceptual stage shall include the information described in Section V. (a).
- b. The County will determine at this initial stage of review whether it will proceed to evaluate the unsolicited proposals using either method a. or b. below:
 - i. Procedures normally used by the County for the evaluation of bids resulting from "competitive sealed bidding" with award to the lowest responsive and responsible private entity. Evaluation may include special qualifications of private entities, life cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability. Awards may be made to more than one private entity. The County may reject any or all proposals at any time and for any reason.
 - ii. Procedures normally used by the County for the evaluation of proposals resulting from the procurement of other than professional services through "competitive negotiation" as follows: Selection shall be typically made of two private entities deemed to be fully qualified and best suited among those submitting proposals. Negotiations shall then be conducted with each of the private entities so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each private entity so selected, the County shall select the private entity, which, in its opinion, has made the best proposal. Awards may be made to more than one private entity. Should the public body determine in writing and in its sole discretion that only one private entity is fully qualified, or that one private entity is clearly more highly qualified than the others under consideration, negotiations may be limited to that private entity. The County may reject any or all proposals at any time and for any reason.

The County may proceed using competitive negotiation procedures described in b. above only if it makes a written determination that doing so is likely to be ad-

vantageous to the County and the public based upon either (i) the probable scope, complexity or urgency of need, or (ii) the risk sharing, added value, increase in funding or economic benefit from the project would otherwise not be available.

- c. After reviewing the original proposal and any competing unsolicited proposals submitted during the notice period, the County may determine:
 - i. not to proceed further with any proposal,
 - ii. to proceed to the detailed phase of review with the original proposal,
 - iii. to proceed to the detailed phase with a competing proposal, or
 - iv. to proceed to the detailed phase with multiple proposals.

5-5. Proposal Preparation and Submission

Format for Submissions at the Conceptual Stage

Proposals at the conceptual stage shall contain the following information in the following format plus any additional information as the County may reasonably request to comply with the requirements of the PPEA:

- a. Qualifications and Experience
 - i. Identify the legal structure of the firm or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach, and how each partner and major subcontractor (over \$100,000) in the structure fits into the overall team. All members of the operator's team, including major subcontractors known to the proposer must be identified at the time a proposal is submitted for the Conceptual Stage. Identified team members, including major subcontractors, may not be substituted or replaced once a project is approved and comprehensive agreement entered into, without the written approval of the County. Include the status of the Virginia license of each partner, proposer, contractor, and major subcontractor.
 - ii. Describe the experience of the firm or consortium of firms making the proposal, the key principals and project managers involved in the proposed project including experience with projects of comparable size and complexity, including prior experience bringing similar projects to completion on budget and in compliance with design, land use, service and other standards. Describe the past safety performance record and current safety capabilities of the firm or consortium of firms. Describe the past technical performance history on recent projects of comparable size and complexity, including disclosure of any legal claims, of the firm or consortium of firms. Describe the length of time in business, business experience, public sector experience, and other engagements of the firm or consortium of firms. Include the identity of any firms that will provide design, construction and completion guarantees and warranties, and a description of such guarantees and warranties.
 - iii. For each firm or major subcontractor that will be utilized in the project, provide a statement listing all of the firm's prior projects and clients for the past 3 years and contact information for same (name, address, telephone number, e-mail address). If a firm has worked on more than ten (10) projects during this period, it may limit its prior project list to ten (10), but shall first include all projects similar in scope and size to the proposed project and, second, it shall include as many of its most recent projects as possible. Each firm or major subcontractor shall be

required to submit all performance evaluation reports or other documents, which are in its possession evaluating the firm's performance during the preceding three years in terms of cost, quality, schedule maintenance, safety and other matters relevant to the successful project development, operation, and completion.

- iv. Provide the names, prior experience, addresses, telephone numbers and e-mail addresses of persons within the firm or consortium of firms who will be directly involved in the project or who may be contacted for further information.
- v. Provide a current or most recently audited financial statement of the firm or firms and each partner with an equity interest of twenty percent or greater.
- vi. Identify any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2.
- vii. Identify proposed plan for obtaining sufficient numbers of qualified workers in all trades or crafts required for the project.
- viii. For each firm or major subcontractor that will perform construction and/or design activities, provide the following information:
 - 1. A sworn certification by an authorized representative of the firm attesting to the fact that the firm is not currently debarred or suspended by any federal, state or local government entity.
 - 2. A completed qualification statement that reviews all relevant information regarding technical qualifications and capabilities, firm resources and business integrity of the firm, including but not limited to, bonding capacities, insurance coverage and firm equipment. This statement shall also include a mandatory disclosure by the firm for the past three years any of the following conduct:
 - a. Bankruptcy filings
 - b. Liquidated damages
 - c. Fines, assessments or penalties
 - d. Judgments or awards in contract disputes
 - e. Contract defaults, contract terminations
 - f. License revocations, suspensions, or other disciplinary actions
 - g. Prior debarments or suspensions by a governmental entity
 - h. Denials of prequalification, findings of non-responsibility
 - i. Safety past performance data, including fatality incidents, "Experience Modification Rating," "Total Recordable Injury Rate" and "Total Lost Workday Incidence Rate"
 - j. Violations of any federal, state or local criminal or civil law

- k. Criminal indictments or investigations
 - l. Legal claims filed by or against the firm
 - ix. Worker Safety Programs: Describe worker safety training programs, job-site safety programs, accident prevention programs, written safety and health plans, including incident investigation and reporting procedures.
- d. Project Characteristics
 - i. Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that type and intent of the project, the location, and the communities that may be affected are clearly identified.
 - ii. Identify and fully describe any work to be performed by the County or any other public entity.
 - iii. Include a list of all federal, state and local permits and approvals required for the project and a schedule for obtaining such permits and approvals.
 - iv. Identify any anticipated adverse social, economic, environmental and transportation impacts of the project measured against the County's comprehensive land use plan and applicable ordinances and design standards. Specify the strategies or actions to mitigate known impacts of the project. Indicate if an environmental and archaeological assessment have been completed.
 - v. Identify the projected positive social, economic, environmental and transportation impacts of the project measured against the County's comprehensive land use plan and applicable ordinances and design standards.
 - vi. Identify the proposed schedule for the work on the project, including sufficient time for the County's review and the estimated time for completion.
 - vii. Identify contingency plans for addressing public needs in the event that all or some of the project is not completed according to projected schedule.
 - viii. Propose allocation of risk and liability, and assurances for timely completion of the project.
 - ix. State assumptions related to ownership, legal liability, law enforcement and operation of the project and the existence of any restrictions on the County's use of the project.
 - x. Provide information relative to phased openings of the proposed project.
- e. Project Financing
 - i. Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.
 - ii. Submit a plan for the development, financing and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds, including any anticipated debt service costs. The opera-

tional plan should include appropriate staffing levels and associated costs based upon the County's adopted operational standards. Include any supporting due diligence studies, analyses, or reports.

- iii. Include a list and discussion of assumptions underlying all major elements of the plan.
- iv. Identify the proposed risk factors and methods for dealing with these factors. Describe methods and remedies associated with any financial default.
- v. Identify any local, state or federal resources that the proposer contemplates requesting for the project along with an anticipated schedule of resource requirements. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment, both one-time and on-going.
- vi. Identify the need, if any, for the County to provide either its general obligation or moral obligation backing. The underlying assumptions should address this need and/or state that the credit would be via a "Service Agreement", for example. Any debt issuance should be expected to receive an investment grade rating from a nationally recognized bond rating agency. If the unenhanced rating is not investment grade, the County may require the use of credit enhancements.
- vii. Outline what impact, if any, a drop in interest rates would have on the ultimate annual project cost. Indicate if there is a method to refinance for cost savings. Indicate who would receive the benefit of any cost savings from a refinancing. Would the savings go to the County, would the savings be shared and to what extent, or does the firm only receive benefit of this potential?
- viii. Outline the financial penalties, if any, that would result should the County wish to terminate a project early or restructure the cash flows for some reason of its own choosing. The firm should be specific on this point.
- ix. If the firm has already chosen an underwriter(s), provide a breakout of the fees to any underwriting firm(s) and the type of obligation the firm(s) are using with a financing component. Be specific as to tax-exempt, taxable, floating rate, fixed rate, etc. If the firm has not yet chosen an underwriter(s), the County reserves the right to have input into the selection of that underwriter(s).

f. Project Benefit and Compatibility

- i. Identify community benefits, including the economic impact the project will have on the local community in terms of amount of tax revenue to be generated for the County, the number jobs generated for area residents and level of pay and fringe benefits of such jobs, and the number and value of subcontracts generated for area subcontractors.
- ii. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition (including that in any affected jurisdiction), for the project.
- iii. Explain the strategy and plans, including the anticipated timeline that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.

- iv. Describe any anticipated significant benefits to the community and the County, including anticipated benefits to the economic, social, environmental, transportation, etc., condition of the County and whether the project is critical to attracting or maintaining competitive industries and businesses to the County.
 - v. Compatibility with the County's and/or affected jurisdiction's local comprehensive plan (including related environmental, land use and facility standards ordinances, where applicable), infrastructure development plans, transportation plans, the capital improvements plan and capital budget or other government spending plan.
- g. Any Additional Information As the County May Reasonably Request

Format for Submissions at the Detailed Stage

If the County decides to proceed to the detailed phase of review with one or more proposals, the following information should be provided by the private entity unless waived by the County:

- a. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project.
- b. Conceptual site plan indicating proposed location and configuration of the project on the proposed site;
- c. Conceptual (single line) plans and elevations depicting the general scope, appearance and configuration of the proposed project;
- d. Detailed description of the proposed participation, use and financial involvement of the County. Include the proposed terms and conditions for the project;
- e. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the proposer to accommodate such crossings.
- f. Information relating to the current plans for development of facilities to be used by a public entity that are similar to the qualifying project being proposed by the private entity, if any, of each affected jurisdiction;
- g. A statement and strategy setting out the plans for securing all necessary property and/or easements. The statement must include the names and addresses, if known, of the current owners of the subject property as well as a list of any property the proposer intends to request the County or affected jurisdiction to condemn.
- h. A detailed listing of all firms, along with their relevant experience and abilities, that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties along with a record of any prior defaults for performance.
- i. A total life-cycle cost, including maintenance, specifying methodology and assumptions of the project or projects including major building systems (e.g., electrical, mechanical, etc.), and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. The life-cycle cost analysis should include, but not be limited to, a detailed analysis of the projected return, rate of return, or both, expected useful life of facility and estimated annual operating expenses using County adopted service levels and standards.

- j. A detailed discussion of assumptions about user fees or rates, lease payments and other service payments, and the methodology and circumstances for changes, and usage of the projects over the useful life of the projects.
- k. Identification of any known government support or opposition, or general public support or opposition for the project. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications.
- l. Demonstration of consistency with appropriate County and/or affected jurisdiction comprehensive plans (including related environmental, land use and facility standards ordinances, where applicable), infrastructure development plans, transportation plans, the capital improvement plan and capital budget, or indication of the steps required for acceptance into such plans.
- m. Explanation of how the proposed project would impact the County's or affected jurisdiction's development plans.
- n. Description of an ongoing performance evaluation system or database to track key performance criteria, including but not limited to, schedule, cash management, quality, worker safety, change orders, and legal compliance.
- o. Identification of any known conflicts of interest or other factors that may impact the County's consideration of the proposal, including the identification of any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2.
- p. Acknowledge conformance with Sections 2.2-4367 through 2.2-4377 of the Code of Virginia, the Ethics in Public Contracting Act;
- q. Additional material and information as the County may reasonably request.

5-6. Proposal Evaluation and Selection Criteria

The following items, along with the specified information required under V.A and V.B above, shall be considered in the evaluation and selection of PPEA proposals.

Qualifications and Experience

Factors to be considered in either phase of the County's review to determine whether the proposer possesses the requisite qualifications and experience will include the following:

- a. Experience, training, and preparation with similar projects;
- b. Demonstration of ability to perform work;
- c. Demonstrated record of successful past performance, including timeliness of project delivery, compliance with plans and specifications, quality of workmanship, cost-control and project safety;
- d. Demonstrated conformance with applicable laws, codes, standards, regulations, and agreements on past projects;
- e. Leadership structure;
- f. Project manager's experience;
- g. Management approach;

- h. Project staffing plans, the skill levels of the proposed workforce, and the proposed safety plans for the project;
- i. Financial condition; and
- j. Project ownership.

Project Characteristics

Factors to be considered in determining the project characteristics include the following:

- a. Project definition;
- b. Proposed project schedule;
- c. Operation of the project;
- d. Technology; technical feasibility;
- e. Conformity to State, County or affected jurisdiction laws, regulations, and standards;
- f. Environmental impacts;
- g. Condemnation impacts;
- h. State and local permits; and
- i. Maintenance of the project.

Project Financing

Factors to be considered in determining whether the proposed project financing allows adequate access to the necessary capital to finance the project include the following:

- a. Cost and cost benefit to the County;
- b. Financing and the impact on the debt or debt burden of the County;
- c. Financial plan including overall feasibility and reliability of plan; default implications; operator's past performance with similar plans and similar projects; degree to which operator has conducted due diligence investigation and analysis of proposed financial plan and results of any such inquiries or studies.
- d. Estimated cost; including debt source, operating costs, etc., and
- e. Life-cycle cost analysis.

Project Benefit and Compatibility

Factors to be considered in determining the proposed project's compatibility with the County's, affected jurisdiction's or regional comprehensive or development plans include the following:

- a. Community benefits; including the economic impact the project will have on the County in terms of amount of tax revenue to be generated for the County, the number jobs generated for area residents and level of pay and fringe benefits of such jobs, and the number and value of subcontracts generated for area subcontractors.

- b. Community support or opposition, or both;
- c. Public involvement strategy;
- d. Public involvement strategy;
- e. Compatibility with existing and planned facilities;
- f. Compatibility with County, regional, and state economic development efforts; and
- g. Compatibility with County's and affected jurisdiction's land use and transportation plans,

5-7. Comprehensive Agreement

Prior to acquiring, designing, constructing, improving, renovating, expanding, equipping, maintaining, or operating the qualifying project, the selected proposer shall enter into a comprehensive agreement with the County. Each comprehensive agreement shall define the rights and obligations of the County and the selected proposer with regard to the project.

The terms of the comprehensive agreement shall be tailored to address the specifics of the project and shall include but not be limited to:

- a. The delivery of maintenance, performance and payment bonds or letters of credit in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project;
- b. The review and approval of plans and specifications for the qualifying project by the County;
- c. The rights of the County to inspect the qualifying project to ensure compliance with the comprehensive agreement;
- d. The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the project and the tort liability to the public and employees and to enable the continued operation of the qualifying project;
- e. The monitoring of the practices of the operator by the County to ensure proper maintenance, safety, use and management of the qualifying project;
- f. The terms under which the operator will reimburse the County for services provided;
- g. The policy and procedures that will govern the rights and responsibilities of the County and the operator in the event that the comprehensive agreement is terminated or there is a material default by the operator including the conditions governing assumption of the duties and responsibilities of the operator by the County and the transfer or purchase of property or other interests of the operator by the County;
- h. The terms under which the operator will file appropriate financial statements on a periodic basis.
- i. The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be the same for persons using the facility under like conditions and that will not materially discourage use of the qualifying project; classi-

fications according to reasonable categories for assessment of user fees may be made.

- j. The terms and conditions under which the County will contribute financial resources, if any, for the qualifying project; and
- k. Other requirements of the PPEA or provisions that the County determines serve the public purpose of the PPEA.

The comprehensive agreement and any amendments thereto shall be approved and entered into in writing by the Board of Supervisors.

Parties submitting proposals understand that representations, information and data supplied in support of, or in connection with proposals plays a critical role in the competitive evaluation process and in the ultimate selection of a proposal by the County. Accordingly, as part of the Comprehensive Agreement, the prospective operator and its team members shall certify that all material representations, information and data provided in support of, or in connection with, a proposal is true and correct. Such certifications shall be made by authorized individuals who have knowledge of the information provided in the proposal. In the event that material changes occur with respect to any representations, information or data provided for a proposal, the prospective operator shall immediately notify the County of same. Any violation of this section of the Comprehensive Agreement shall give the County the right to terminate the Agreement, withhold payment or other consideration due, and seek any other remedy available under the law.

5-8. Projects Intended for Use by the York County School Board

Proposals for qualifying projects for which the York County School Board shall be the sole using public entity shall be submitted to the County's Purchasing Office, and the County shall provide all required public notices. However, decisions whether to accept and consider any such proposal, and the evaluation or review of any such proposal, shall be by the School Board, and the School Board shall approve and execute the Comprehensive agreement.

APPENDIX

VIRGINIA CODE PROVISIONS APPLICABLE TO COUNTY PROCUREMENT.

The following provisions of the Code of Virginia apply to the purchasing procedures of the County and are incorporated in this policy for the convenience of the user:

§ 2.2-4301 ... "Competitive negotiation" ... 3.a, Procurement of professional services.

The public body shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the public body shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price.

Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

A contract for architectural or professional engineering services relating to construction projects may be negotiated by a public body, for multiple projects provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the contract term is limited to one year or when the cumulative total project fees reach the maximum cost authorized in this paragraph, whichever occurs first. Such contract may be renewable for two additional one-year terms at the option of the public body. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed, (b) the sum of all projects performed in one contract term shall not exceed \$500,000 or, in the case of a state agency, as defined in § 2.2-4347, such lesser amount as may be determined by the Director of the Department of General Services, and (c) the project fee of any single project shall not exceed \$100,000 or, in the case of a state agency, such lesser amount as may be determined by the Director of the Department of General Services, except that in any locality or any authority or sanitation district with a population in excess of 8,000, such fee shall not exceed \$200,000. Any unused amounts from the first contract term shall not be carried forward to the additional term. Competitive negotiations for such contracts may result in awards to more than one offeror provided (i) the Request for Proposal so states and (ii) the public body has established procedures for distributing multiple projects among the selected contractors during the contract term.

Multiphase professional services contracts satisfactory and advantageous to the Department of Transportation for environmental, location, design and inspection work regarding highways and bridges may be negotiated and awarded based on a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases.

§ 2.2-4303. ...Methods of procurement. C and D--

- C. Upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods, services, or insurance may be procured by competitive negotiation. The writing shall document the basis for this determination.

Upon a written determination made in advance by (i) the Governor or his designee in the case of a procurement by the Commonwealth or by a department, agency or institution thereof or (ii) the local governing body in the case of a procurement by a political subdivision of the Commonwealth, that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the manner provided for the procurement of things other than professional services in subdivision 3 b of the definition of "competitive negotiation" in § 2.2-4301. The basis for this determination shall be documented in writing.

- D. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:
1. By the Commonwealth, its departments, agencies and institutions on a fixed price design-build basis or construction management basis under § 2.2-4306;
 2. By any public body for the alteration, repair, renovation or demolition of buildings when the contract is not expected to cost more than \$500,000;
 3. By any public body for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property; or
 4. As otherwise provided in § 2.2-4308.

§ 2.2-4305. Competitive procurement by localities on state-aid projects.

No contract for the construction of any building or for an addition to or improvement of an existing building by any local governing body or subdivision thereof for which state funds of not more than \$30,000 in the aggregate of for the sum of all phases of a contract or project, either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided under subsection D of §2.2-4303. The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to this chapter.

§ 2.2-4308. Design-build or construction management contracts for public bodies other than the Commonwealth; eligibility requirements; award of contract; records to be kept.

A. While the competitive sealed bid process remains the preferred method of construction procurement for public bodies in the Commonwealth, any public body other than the Commonwealth may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis provided the public body complies with the requirements of this section and has obtained the approval of the Design-Build/Construction Management Review Board (the Review Board) pursuant to § 2.2-2406.

Prior to making a determination as to the use of design-build or construction management for a specific construction project, the public body shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall advise the public body regarding the use of design-build or construction management for that project and who shall assist the public body with the preparation of the Request for Proposal and the evaluation of such proposals.

Prior to issuing a Request for Proposal for any design-build or construction management contract for a specific construction project, the public body shall:

1. Have adopted, by ordinance or resolution, written procedures governing the selection, evaluation, and award of design-build and construction management contracts. Such procedures shall be consistent with those described in this chapter for the procurement of nonprofessional services through competitive negotiation. Such procedures shall also require Requests for Proposals to include and define the criteria of such construction project in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical systems; and special telecommunications; and may define such other requirements as the public body determines appropriate for that particular construction project. Except as may otherwise be approved by the Review Board, such procedures for:
 - a. Design-build construction projects shall include a two-step competitive negotiation process consistent with the Review Board's regulations.
 - b. Construction management projects shall include selection procedures and required construction management contract terms consistent with the Review Board's regulations.
2. Have documented in writing that for a specific construction project (i) a design-build or construction management contract is more advantageous than a competitive sealed bid construction contract; (ii) there is a benefit to the public body by using a design-build or construction management contract; and (iii) competitive sealed bidding is not practical or fiscally advantageous.

B. Once approved by the Review Board in accordance with § 2.2-2406, the public body may procure a design-build or construction management contract for the specific construction project presented to the Review Board. Unless otherwise specified in the Request for Proposal, the contract shall be awarded to the fully qualified offeror who submits an acceptable proposal at the lowest cost in response to the Request for Proposal.

C. The public body shall provide information as requested by the Review Board to allow post-project evaluation by the Review Board.

§ 2.2-4311. Employment discrimination by contractor prohibited.

All public bodies shall include in every contract of over \$10,000 the following provisions:

1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
2. The contractor will include the provisions of the foregoing paragraphs a, b, and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

§ 2.2-4312. Drug-free workplace to be maintained by contractor; required contract provisions.

All public bodies shall include in every contract over \$10,000 the following provisions:

During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

§ 2.2-4315. Use of brand names.

Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or manufacturer named; and shall be deemed to convey the general style, type, character, and quality of the article desired, and any article which that public body in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

§ 2.2-4317. Prequalification generally; prequalification for construction.

- A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedure shall be established in writing and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process.
- B. Any prequalification of prospective contractors for construction by a public body shall be pursuant to a prequalification process for construction projects adopted by the public body. The process shall be consistent with the provisions of this section.

The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of subsection D of § 2.2-4342.

In all instances in which the public body requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.

At least thirty days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the public body shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.

A decision by a public body denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in § 2.2-4357.

- C. A public body may deny prequalification to any contractor only if the public body finds one of the following:
 - 1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the public body shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;
 - 2. The contractor does not have appropriate experience to perform the construction project in question;
 - 3. The contractor or any officer, director or owner thereof has had judgments entered against him within the past ten years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design-build or construction management;
 - 4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with a public body without good cause. If the public body has not contracted with a contractor in any prior construction

contracts, the public body may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. A public body may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;

5. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 (§ 2.2-4367 et seq.) of this chapter, (ii) the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), (iii) Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1, or (iv) any substantially similar law of the United States or another state;
 6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and
 7. The contractor failed to provide to the public body in a timely manner any information requested by the public body relevant to subdivisions 1 through 6 of this subsection.
- D. If a public body has a prequalification ordinance that provides for minority participation in municipal construction contracts, that public body may also deny prequalification based on minority participation criteria. However, nothing herein shall authorize the adoption or enforcement of minority participation criteria except to the extent that such criteria, and the adoption and enforcement thereof, are in accordance with the Constitution and laws of the United States and the Commonwealth.
- E. The provisions of this subsection shall not apply to prequalification for contracts let by the Commonwealth Transportation Board under § 33.1-12.

§ 2.2-4330. Withdrawal of bid due to error.

- A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

One of the following procedures for withdrawal of a bid shall be selected by the public body and stated in the advertisement for bids: (i) the bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice; or (ii) the bidder shall submit to the public body or designated official his original work

papers, documents and materials used in the preparation of the bid within one day after the date fixed for submission of bids. The work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. In either instance, the work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of subsection F of § 2.2-4342. The bids shall be opened one day following the time fixed by the public body for the submission of bids. Thereafter, the bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the public body until the two-hour period has elapsed. The mistake shall be proved only from the original work papers, documents and materials delivered as required herein.

- B. A public body may establish procedures for the withdrawal of bids for other than construction contracts.
- C. No bid shall be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.
- D. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to be the low bid.
- E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.
- F. If the public body denies the withdrawal of a bid under the provisions of this section, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.

§ 2.2-4333. Retainage on construction contracts.

- A. In any public contract for construction that provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent of the earned sum when payment is due, with not more than five percent being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment.
- B. Any subcontract for a public project that provides for similar progress payments shall be subject to the provisions of this section.

§ 2.2-4334 Deposit of certain retained funds on certain contracts with local governments; penalty for failure to timely complete.

- A. Any county, city, town or agency thereof or other political subdivision of the Commonwealth when contracting directly with contractors for public contracts of \$200,000 or more for construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage structures, and the installation of water, gas, sewer lines and pumping stations where portions of the contract price are to be retained, shall include in the Bid Proposal an option for the contractor to use an escrow account procedure for utilization of the political subdivision's retainage funds by so indicating in the space provided in the proposal documents. In the event the contractor elects to use the escrow account procedure, the escrow agreement form included in the Bid Proposal and Contract shall be executed and submitted to the political subdivision within fifteen calendar days after notification. If the escrow agreement form is not submitted within the fifteen-day period, the contractor shall forfeit his rights to the use of the escrow account procedure.

- B. In order to have retained funds paid to an escrow agent, the contractor, the escrow agent, and the surety shall execute an escrow agreement form. The contractor's escrow agent shall be a trust company, bank or savings institution with its principal office located in the Commonwealth. The escrow agreement and all regulations adopted by the political subdivision entering into the contract shall be substantially the same as that used by the Virginia Department of Transportation.
- C. This section shall not apply to public contracts for construction for railroads, public transit systems, runways, dams, foundations, installation or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter, the installation or maintenance of telephone, telegraph or signal systems for public utilities and the construction or maintenance of solid waste or recycling facilities and treatment plants.
- D. Any such public contract for construction with a county, city, town or agency thereof or other political subdivision of the Commonwealth, which includes payment of interest on retained funds, may require a provision whereby the contractor, exclusive, of reasonable circumstances beyond the control of the contractor stated in the contract, shall pay a specified penalty for each day exceeding the completion date stated in the contract.
- E. Any subcontract for such public project that provides for similar progress payment shall be subject to the provisions of this section.

§ 2.2-4335. Public construction contract provisions barring damages for unreasonable delays declared void.

- A. Any provisions contained in any public construction contract that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay, in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent the delay is caused by acts or omissions of the public body, its agents or employees and due to causes within their control shall be void and unenforceable, as against public policy.
- B. Subsection A shall not be construed to render void any provision of a public construction contract that:
 - 1. Allows a public body to recover that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees;
 - 2. Requires notice of any delay by the party claiming the delay;
 - 3. Provides for liquidated damages for delay; or
 - 4. Provides for arbitration or any other procedure designed to settle contract disputes.
- C. A contractor making a claim against a public body for costs or damages due to the alleged delaying of the contractor in the performance of its work under any public construction contract shall be liable to the public body and shall pay it for a percentage of all costs incurred by the public body in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim that is determined through litigation or arbitration to be false or to have no basis in law or in fact.
- D. A public body denying a contractor's claim for costs or damages due to the alleged delaying of the contractor in the performance of work under any public construction contract shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the public body shall be equal to the percentage of the contractor's total delay claim for which the public body's denial is determined through litigation or arbitration to have been made in bad faith.

§ 2.2-4336. Bid bonds.

- A. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$100,000 shall be accompanied by a bid bond from a surety company selected by the bidder that is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid.
- B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.
- C. Nothing in this section shall preclude a public body from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$100,000.

§ 2.2-4337. Performance and payment bonds.

- A. Upon the award of any (i) public construction contract exceeding \$100,000 awarded to any prime contractor or (ii) construction contract exceeding \$100,000 awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned by a public body, the contractor shall furnish to the public body the following bonds:
 - a. Except for transportation-related projects, a performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects, such bond shall be in a form and amount satisfactory to the public body.
 - b. A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work.

“Labor or materials” shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.
- B. Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia.
- C. If the public body is the Commonwealth, or any agency or institution thereof, the bonds shall be payable to the Commonwealth of Virginia, naming also the agency or institution thereof. Bonds required for the contracts of other public bodies shall be payable to such public body.
- D. Each of the bonds shall be filed with the public body that awarded the contract, or a designated office or official thereof.
- E. Nothing in this section shall preclude a public body from requiring payment or performance bonds for construction contracts below \$100,000.
- F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.

§ 2.2-4338. Alternative forms of security.

- A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.
- B. If approved by the Attorney General in the case of state agencies, or the attorney for the political subdivision in the case of political subdivisions, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the public body equivalent to a corporate surety's bond.
- C. The provisions of this section shall not apply to the Department of Transportation.

§ 2.2-4340. Action on performance bond.

No action against the surety on a performance bond shall be brought unless within five years after completion of the work on the project to the satisfaction of the Department of Transportation, in cases where the public body is the Department of Transportation, or in all other cases within one year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action.

§ 2.2-4341. Actions on payment bonds; waiver of right to sue.

- A. Subject to the provisions of subsection B, any claimant who has performed labor or furnished material in accordance with the contract documents in furtherance of the work provided in any contract for which a payment bond has been given, and who has not been paid in full before the expiration of ninety days after the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, may bring an action on the payment bond to recover any amount due him for the labor or material. The obligee named in the bond need not be named a party to such action.
- B. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.
- C. Any action on a payment bond shall be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.
- D. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.

§ 2.2-4343.1. Permitted contracts with certain religious organizations; purpose; limitations.

- A. It is the intent of the General Assembly, in accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, to authorize public bodies to enter into contracts with faith-based organizations for the purposes described

in this section on the same basis as any other nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

- B. For the purposes of this section, "faith-based organization" means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.
- C. Public bodies, in procuring goods or services, or in making disbursements pursuant to this section, shall not (i) discriminate against a faith-based organization on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.
- D. Public bodies shall ensure that all invitations to bid, requests for proposals, contracts, and purchase orders prominently display a nondiscrimination statement indicating that the public body does not discriminate against faith-based organizations.
- E. A faith-based organization contracting with a public body (i) shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. Nothing in clause (ii) shall be construed to supercede or otherwise override any other applicable state law.
- F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent for sectarian worship, instruction, or proselytizing; however, this prohibition shall not apply to expenditures pursuant to contracts, if any, for the services of chaplains.
- G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization from any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization has exercised the right, as expressed in 42 U.S.C. (§ 2000e-1 et seq.), to employ persons of a particular religion.
- H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant to a contract between a public body and a faith-based organization, objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider. The public body shall provide to each individual who applies for or receives goods, services, or disbursements provided pursuant to a contract between a public body and a faith-based organization a notice in bold face type that states: "Neither the public body's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the appropriate person as indicated in this form."

The provisions of this article supplement, but shall not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§2.2-3100 et seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.) and Articles 2 (§ 18.2-438 et seq.) and 3 (§18.2-446 et seq.) of Chapter 10 of Title 18.2.

The provisions of this article shall apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

§ 2.2-4368. Definitions. -- As used in this article:

“Immediate family” means a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.

“Official responsibility” means administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.

“Pecuniary interest arising from the procurement” means a personal interest in a contract as defined in the State and Local Government Conflict of Interests Act (§2-2.3100 et seq.).

“Procurement transaction” means all functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

“Public employee” means any person employed by a public body, including elected officials or appointed members of governing bodies.

§ 2.2-4369. Proscribed Participation by employees in procurement transactions.

Except as may be specifically allowed by subdivisions A 2 and A 3 of § 2.2-3112, no public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the public body when the employee knows that:

- A. The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction;
- B. The employee, the employee’s partner, or any member of the employee’s immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent;
- C. The employee, the employee’s partner, or any member of the employee’s immediate family has a pecuniary interest arising from the procurement transaction; or
- D. The employee, the employee’s partner, or any member of the employee’s immediate family is negotiating, or has an arrangement concerning, prospective employment with a bidder, offeror or contractor.

§ 2.2-4370. Disclosure of subsequent employment.

No public employee or former public employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the public body unless the employee or former employee provides written notification to the public body, or a public official if designated by the public body, or both, prior to commencement of employment by that bidder, offeror or contractor.

§ 2.2-4371. Prohibition on solicitation or acceptance of gifts; gifts by bidders, offerors, contractor or subcontractors prohibited.

- A. No public employee having official responsibility for a procurement transaction shall solicit, demand, accept or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The public body may recover the value of anything conveyed in violation of this section.
- B. No bidder, offeror, contractor or subcontractor shall confer upon any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

§ 2.2-4372. Kickbacks.

- A. No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.
- B. No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.
- C. No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.
- D. If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the public body and shall be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

§ 2.2-4373 Participation in bid preparation; limitation on submitting bid for same procurement.

No person who, for compensation, prepares an invitation to bid or request for proposal for or on behalf of a public body shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement that is not available to the public. However, a public body may permit such person to submit a bid or proposal for that procurement or any portion thereof if the public body determines that the exclusion of the person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the public body.

§ 2.2-4374. Purchase of building materials, etc., from architect or engineer prohibited.

- A. No building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person employed as an independent contractor by the public body to furnish architectural or engineering services, but not construction, for such building or structure or from any partnership, association or corporation in which such architect or engineer has a personal interest as defined in § 2.2-3101.
- B. No building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person who has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in the building or structure to the independent contractor employed by the public body to furnish architectural or engineering services in which such person has a personal interest as defined in § 2.2-3101.

- C. The provisions of subsections A and B shall not apply in cases of emergency or for transportation-related projects conducted by the Department of Transportation or the Virginia Port Authority.

§2.2-4375. Certification of compliance required; penalty for false statements.

- A. Public bodies may require public employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with the provisions of this article.
- B. Any public employee required to submit a certification as provided in subsection A of this section who knowingly makes a false statement in the certification shall be punished as provided in §2.2-4377.

§2.2-4376. Misrepresentations prohibited.

No public employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing it to contain any false, fictitious or fraudulent statement or entry.

§ 2.2-4377. Penalty for violation.

Any person convicted of a willful violation of any provision of this article shall be guilty of a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.

On roll call the vote was:

Yea: (5) Shepperd, Zaremba, Noll, Wiggins, Burgett
Nay: (0)

AMENDMENT TO THE YORK COUNTY CODE: REASSESSMENTS

Mrs. White made a brief presentation explaining the purpose of proposed Ordinance No. 03-41 to amend the York County Code, Section 21-18, relating to an extension of time for the completion of reassessments.

Mr. Zaremba stated he felt it was responsible of the County to extend these deadlines, but he found nothing that suggested this was a one-time extension.

Mrs. White noted the extension staff asked for from the Circuit Court was a one-time extension. The ordinance amendment is permanent in the event the County needs to request another extension in the future.

Mr. McReynolds noted staff was very aware of the need to communicate the dates revised dates to the citizens. He stated the mailing of the assessment notices will contain the dates.

Mr. Burgett then called to order a public hearing on proposed Ordinance No. 03-41 that was duly advertised as required by law and is entitled:

AN ORDINANCE TO AMEND YORK COUNTY CODE SECTION 21-18 RELATING TO EXTENSION OF TIME FOR THE COMPLETION OF REASSESSMENTS

There being no one present who wished to speak concerning the subject ordinance, Chairman Burgett closed the public hearing.

Mr. Zaremba moved the adoption of proposed Ordinance No. 03-41 that reads:

AN ORDINANCE TO AMEND YORK COUNTY CODE SECTION 21-18 RELATING TO EXTENSION OF TIME FOR THE COMPLETION OF REASSESSMENTS

BE IT ORDAINED by the York County Board of Supervisors, this 2nd day of December, 2003, that section 21-18, York County Code, be and it is hereby amended to read and provide as follows:

Sec. 21-18. Hearings of the board of equalization.

The board of equalization shall sit beginning March 1, or the first day thereafter which is not a Saturday, a Sunday or a legal holiday, of each even-numbered year for the purpose of hearing the applications of property owners for correction of their assessment(s). In no event shall such hearings be held earlier than thirty (30) days after the date the county assessor has completed his hearings. The board of equalization shall provide ten (10) days notice, as required by section 58.1-3378 of the Code of Virginia, of the place and time of its sittings to equalize real estate assessments. All property owners wishing to be heard must file an application for hearing on or before February 28 of each such year or within thirty (30) days of the termination of hearings by the county assessor, whichever is later. Forms for such application shall be available at the office of the county assessor and no property owner who fails to meet the filing deadline shall be heard. The board of equalization shall conduct hearings on a continuing basis and conclude its work on or before April 30 of such year. In odd-numbered years, the board of equalization shall meet according to need upon authorization of the board of supervisors. In the event that the circuit court shall grant an extension of time for the completion of reassessments pursuant to Code of Virginia section 58.1-3257 and York County Code section 21-11, all times set out in this section shall automatically be extended likewise.

On roll call the vote was:

Yea: (5) Zaremba, Noll, Wiggins, Shepperd, Burgett
Nay: (0)

APPLICATION NO. ZT-80-03, YORK COUNTY PLANNING COMMISSION

Mr. Carter reviewed Application No. ZT-80-03 to amend the York County Zoning Ordinance to reflect changes in the Chesapeake Bay Preservation Area regulations promulgated by the Chesapeake Bay Local Assistance Board. He noted it was a mandate by the State, and the County has until December 31 to adopt the new regulations. The Planning Commission considered the application and forwarded it to the Board of Supervisors with a recommendation of approval, and staff recommended approval of the application through the adoption of proposed Ordinance No. 03-44. He also noted that proposed Resolution R03-192 was attached for the Board's consideration to approve the Chesapeake Bay Preservation Area Buffer Guidelines to be used to supplement the provisions of Section 24.1-372 of the Zoning Ordinance. Mr. Carter then went through the ordinance and identified the changes indicating which were mandated and which were suggested by staff.

Mr. Zaremba asked if the Board had had a work session on this matter.

Mr. Carter indicated the Board had not conducted a work session on this topic.

Mr. Zaremba indicated that as he read through the ordinance, it seemed like not only do the requirements place an additional unfunded burden or mandate on the County for compliance, but it also is an individual burden on owners of the properties affected by these regulations. He asked if the Board and staff has had enough opportunity to try to understand and work out all the issues.

Mr. Shepperd stated it was a very difficult situation, and the County Administrator's recommendation is to comply with this recommendation which will require an increase in staff. This

becomes an unfunded mandate, and he asked if there was any idea as to what it will cost the County and the residents. He asked if this would reduce available land for residences and businesses.

Mr. Carter noted he did not know if Mr. Hudgins had come up with figures or number of people that will be required. He indicated many of the acres affected are within the Newport News watershed. There are provisions in the recommended guidelines that say anyone whose existing lot is impacted negatively by a perennial stream can go through the administrative procedures that are available which will provide an additional relief valve.

Mr. Shepperd asked if these requirements will reduce the assessed value of the property, assuming the residents know their property is being impacted, until they get ready to sell it or develop it.

Mr. Carter it may impact the development yield of the property which could impact the value.

Mr. Shepperd indicated this could then lower property values, which would lower tax revenues, which could lead to a tax increase.

Chairman Burgett noted this was something the Board needed to discuss further.

Discussion followed about the deadline for adopting the new regulations and the possibility of obtaining an extension.

Chairman Burgett then called to order a public hearing on Application No. ZT-80-03 that was duly advertised as required by law. Proposed Ordinance No. 03-44 is entitled:

AN ORDINANCE TO APPROVE APPLICATION NO. ZT-80-03,
YORK COUNTY PLANNING COMMISSION, WHICH PROPOSES
AMENDMENT OF THE YORK COUNTY ZONING ORDINANCE
(CHAPTER 24.1, YORK COUNTY CODE) BY REVISING VARIOUS
PROVISIONS OF SECTION 24.1-372 – EMA – ENVIRONMENTAL
MANAGEMENT AREA OVERLAY DISTRICT DEALING WITH
CHESAPEAKE BAY PROTECTION AREA REQUIREMENTS

Mr. David Mastio, 900 Artisan Avenue, Chesapeake, representing the Peninsula Housing and Builders Association, stated the Association was adamantly opposed to changing the regulations as proposed. This will cause significant confusion in the development community, and the Association supports Mr. McReynolds' recommendation that the application be tabled for further discussion. He stated the Association offers the expertise of its members on making these regulations as minimally intrusive on property owners as possible, and they appreciate the opportunity to be involved with the County on this matter. Mr. Mastio expressed his concern that some of the changes not required by the state might be unnecessarily burdensome. One of the changes that causes concern is the proposal for a buffer on a buffer, and the RPA already takes away 10,000 square feet from the property. He stated they are also concerned that definitions in the ordinance should be very specific.

Mr. Paul Garman, 109 Chismans Point Road, representing Mid-Atlantic Commercial, expressed concerns about the proposed ordinance. He noted he was involved in the original adoption, and feels the proposal needs to be tabled tonight. He also suggested an abbreviated action like the Board did with Route 17 and establish a group to sit down and look at the issue from all sides. Mr. Garman stated all of the commercial property will be affected, and he asked the Board to table the application and put together a group to look at all sides of the matter and decide what is best for York County.

There being no one else present who wished to speak concerning the subject application, Chairman Burgett closed the public hearing.

Discussion followed on the suggestion to table the application.

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Mr. Zaremba suggested adding this application to the December 9 work session agenda if an extension cannot be obtained.

Mr. McReynolds indicated there would be no problem with adding this to the December 9 agenda and moving the FY2005 proposed new programs/personnel to a work session in January.

Mrs. Noll moved to table Application No. ZT-80-03.

On roll call the vote was:

Yea: (5) Noll, Wiggins, Shepperd, Zaremba, Burgett
Nay: (0)

APPLICATION NO. ZT-79-03, YORK COUNTY BOARD OF SUPERVISORS

Mr. Carter made a presentation explaining Application No. ZT-79-03 to amend the York County Zoning Ordinance to revise the minimum principal building spacing standards to require a minimum separation of 20 feet in open space (cluster) subdivisions. The Planning Commission considered the application and forwarded it to the Board of Supervisors with a recommendation of approval, and staff recommended approval of the application through the adoption of proposed Ordinance No. 03-43.

Mr. Wiggins asked about the setbacks for detached garages, stating he did not see any difference in them and what was being proposed, and stated he did not see the need for the ordinance.

Mr. Carter stated the accessory structures don't serve as occupied units. There is more concern about an occupied unit in terms of protecting it in a fire situation. The close nature of living units are looked at also.

Mr. Zaremba stated the proposal does not allow the Fire Chief to grant exceptions if in his opinion it would be merited.

Mr. Carter stated the exception would have to be made by the Board of Zoning/Subdivision Appeals.

Mr. Zaremba asked if by changing the ordinance would hundreds of properties in York County be changed to non-conforming which will impact the ability to sell them.

Mr. Carter stated all existing lots are grandfathered to current standards and will continue to operate under the same standards as they are today.

Discussion followed concerning the importance of the 20 feet separation in terms of fire safety and the advantages of a cluster subdivision versus standard ones.

Chairman Burgett then called to order a public hearing on Application No. ZT-79-03 that was duly advertised as required by law. Proposed Ordinance No. 03-43 is entitled:

AN ORDINANCE TO APPROVE APPLICATION NO. ZT-79-03, YORK COUNTY BOARD OF SUPERVISORS, WHICH PROPOSES AMENDMENT OF SECTION 24.1-402, STANDARDS FOR OPEN SPACE DEVELOPMENT (CLUSTER TECHNIQUES), OF CHAPTER 24.1, ZONING (YORK COUNTY CODE) TO REVISE THE MINIMUM PRINCIPAL BUILDING SPACING STANDARDS TO REQUIRE A MINIMUM SEPARATION OF 20 FEET

Mr. David Mastio, representing the Peninsula Housing and Builders Association, distributed a site design manual from CBLAD to the Board members. He noted the site development principles call for smaller lot sizes and relaxed side yard setbacks. He spoke of the advantages of

cluster developments and addressed concerns about fire safety. He stated in the State fire code and building code there are rules for when houses are built close to each other, and the answer is to build better walls. Mr. Mastio stated he would be willing to work with the fire chief on this.

Mr. Paul Garman, representing Mid-Atlantic Commercial, stated this is again a land use issue, and he suggested the Board table this application and see if it is really necessary and is best for the County. He stated if it is a non-essential item that will bring up the cost of building, he suggested the Board spend more time looking at it.

There being no one else present who wished to speak concerning the subject application, Chairman Burgett closed the public hearing.

Mr. Wiggins stated he felt it would be a mistake for the Board to relinquish its authority on subdivisions that might be different. He spoke of some of the projects that have benefited from the smaller setbacks, and provided a lot of revenue to York County as compared to what they would have under traditional development. He stated he felt it would be a mistake to give up the privilege or right of making these decisions.

Discussion followed regarding the possibility of tabling the application to the next regular meeting for further input and possible adjustments.

Mrs. Noll moved that the application be tabled.

On roll call the vote was:

Yea:	(5)	Wiggins, Shepperd, Zaremba, Noll, Burgett
Nay:	(0)	

APPLICATION NO. ZT-78-03, YORK COUNTY BOARD OF SUPERVISORS

Mr. Carter made a presentation explaining Application No. ZT-78-03 to amend the York County Zoning Ordinance relating to the Landscaping, Buffer, and Greenbelt Regulations, Off-Street Parking and Loading, and Signs. He summarized the different recommendations made by the Planning Commission and discussed the alternate greenbelt provisions the Board could choose to adopt. He also suggested that Section 24.1-702 be amended to provide for a maximum of 240 square feet of sign space. The Planning Commission considered the application and forwarded it to the Board of Supervisors with a recommendation of approval, and staff recommended approval of the application through the adoption of proposed Ordinance No. 03-42(R).

Mr. Zaremba noted the Regional Issues Committee recommended a 50-foot greenbelt, and the Planning Commission agreed that 50 feet was reasonable, yet the County Administrator has indicated he had been made aware of some concerns about shallow depth parcels and is recommending 45 feet in some cases. He asked what were the concerns or the logic behind the recommendation.

Discussion followed regarding the 45-foot greenbelt recommendation by the County Administrator and staff and the recommendation to reduce the number of parking spaces required in commercial projects.

Chairman Burgett then called to order a public hearing on Application No. ZT-78-03 that was duly advertised as required by law. Proposed Ordinance No. 03-42(R) is entitled:

AN ORDINANCE TO APPROVE APPLICATION NO. ZT-78-03, YORK COUNTY BOARD OF SUPERVISORS, WHICH PROPOSES AMENDMENT OF THE YORK COUNTY ZONING ORDINANCE (CHAPTER 24.1, YORK COUNTY CODE) BY REVISING VARIOUS PROVISIONS OF ARTICLE II - DIVISION 4 - LANDSCAPING, BUFFER AND GREENBELT REGULATIONS, ARTICLE VI - OFF-STREET PARKING AND LOADING, AND ARTICLE VII - SIGNS

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There being no one present who wished to speak regarding the subject application, Chairman Burgett closed the public hearing.

Mr. Shepperd noted it was important that Regional Issues Committee played a part in this, and Mr. Carter has been a work horse with them in helping identifying parallel issues between the different jurisdictions.

Mrs. Noll stated that after seeing the storage facility on Route 134, she was more than pleased that the Board was going to expand the greenbelt requirement.

Mr. Zaremba commended Mr. Carter for the work on this matter, but stated he has a problem with making an exception to decrease the requirement to 45 feet because of some particular property owners. He indicated it was not equitable across the County, and he saw no reason to change.

Mr. Shepperd then moved the adoption of proposed Ordinance No. 03-42(R) that reads:

AN ORDINANCE TO APPROVE APPLICATION NO. ZT-78-03, YORK COUNTY BOARD OF SUPERVISORS, WHICH PROPOSES AMENDMENT OF THE YORK COUNTY ZONING ORDINANCE (CHAPTER 24.1, YORK COUNTY CODE) BY REVISING VARIOUS PROVISIONS OF ARTICLE II - DIVISION 4 - LANDSCAPING, BUFFER AND GREENBELT REGULATIONS, ARTICLE VI - OFF-STREET PARKING AND LOADING, AND ARTICLE VII - SIGNS

WHEREAS, the York County Board of Supervisors has sponsored Application No. ZT-78-03 to allow consideration of various amendments to the landscaping, parking and signage regulations contained in the Zoning Ordinance; and

WHEREAS, this application has been referred to the Planning Commission for review and recommendation in accordance with applicable procedures; and

WHEREAS, subsequent to conducting a duly advertised public hearing the Commission has recommended approval of the proposed amendments; and

WHEREAS, the Board has considered the recommendations of the Commission and staff and, after conducting a duly advertised public hearing, has determined that the proposed amendments are appropriate and will be consistent with goals established in the Comprehensive Plan and with good zoning practice;

NOW, THEREFORE, BE IT ORDAINED by the York County Board of Supervisors this the 2nd day of December, 2003, that it does hereby approve Application No. ZT-78-03 to amend the York County Zoning Ordinance (Chapter 24.1, York County Code) as shown in the following sections.

BE IT FURTHER ORDAINED that, in addition to any rights as may be vested by virtue of applicable law, any development proposal for which a complete site plan has been submitted to and accepted for review the County by this date, or any development proposal for which an official pre-application conference has been conducted by the Department of Environmental and Development Services by this date, shall not be required to comply with the amended provisions adopted herein.

DIVISION 4. LANDSCAPING, BUFFER, AND GREENBELT REGULATIONS

Sec. 24.1-240. Intent.

The following regulations are intended to establish minimum standards for landscape design and for the preservation of trees in order to better control soil erosion and the transport of sediment, protect and improve the quality of surface and groundwaters, screen noise and dust, and preserve, protect and enhance the natural and built environment.

The transitional buffer regulations established herein are intended to minimize potential conflicts between development on properties located in abutting zoning districts of differing intensities. The purpose of transitional buffers is to ensure that a natural area of appropriate size and density of plantings is located between potentially incompatible land uses.

The greenbelt regulations established herein are intended to implement the specific comprehensive plan designations of greenbelts.

Sec. 24.1-241. Landscape plan.

- (a) A landscape plan shall be:
 - (1) Required in conjunction with any development project requiring site plan or development plan approval;
 - (2) Prepared and/or certified by a landscape architect, landscape nursery person, horticulturalist, or other design professional practicing within their area of competence; provided, however, that in the case of development proposals involving sites located on a secondary system roadway and classified IL or IG, the landscaping plan may be prepared by the property owner;
 - (3) Shall cover the entire project area included in the overall site plan or development plan for which approval is sought.
- (b) A landscape plan submitted to meet the requirements established by the provisions of this chapter shall include the following information and existing and proposed site landscape features:
 - (1) Location and identification by size and name, both common and botanical, of all heritage, memorial or specimen trees in open areas on the site which are proposed to be disturbed. In wooded areas, the woodline before site preparation, average size, and predominant species of trees shall be noted, except that any heritage or memorial, within a wooded area proposed for clearing shall be individually located and identified by size and name, both botanical and common.
 - (2) Existing vegetation to be saved shall be indicated and noted accurately if credits for tree preservation are being proposed or claimed.
 - (3) Location, dimensions and area of all required buffer and landscape yards, including transitional areas.
 - (4) Location and description of other proposed landscape improvements such as earth berms, walls, fences, or paved areas including notes and details to describe fully the methods and materials proposed.
 - (5) Plant list or schedule to include common and botanical name, quantity, spacing and size at time of planting of all proposed plants.
 - (6) Locations and labels of all proposed plants.
 - (7) Planting, installation details and tree protection details as necessary to ensure conformance with the standards in section 24.1-242.
 - (8) Schedules or lists showing required and proposed quantities for landscape items required by the zoning ordinance.

- (c) In preparing landscape plans the following factors shall be considered:
 - (1) Location of trees, shrubs, groundcovers and other landscaping to utilize effectively the natural capacities of plant materials to intercept and absorb airborne and runoff-related pollutants and to reduce runoff volume, velocity and peak flow increases caused by development.
 - (2) Preservation and protection of existing viable and mature trees to the maximum extent feasible.
 - (3) Appropriateness of plants and locations for the specific characteristics of the site and the purpose for installation.
 - (4) A preference to designs and plant materials with reduced water needs.
 - (5) An emphasis on landscaping in front of the principal building on the site and on providing appropriate breaks in parking and vehicular areas.
- (d) No site or development plan required under the terms of this chapter shall receive final approval unless a landscaping plan has been submitted and approved.
- (e) No certificate of zoning compliance or certificate of occupancy may be issued unless the following criteria are fully satisfied with regard to the approved landscape plan:
 - (1) Such plan has been implemented on the site; or
 - (2) Such plan, because of seasonal conditions, cannot be implemented immediately, but has been guaranteed by a postponed improvement agreement between the developer and the county in a form acceptable to the county attorney, and secured by a letter of credit, cash escrow or other instrument acceptable to the county attorney in an amount equal to the cost of such installation plus a reasonable allowance for estimated administrative costs, inflation and potential damage to existing vegetation or improvements (see sample agreement in Appendix B). An irrevocable fully executed contract with a landscape contractor or nursery providing for such installation shall be deemed to be a sufficient guarantee for the purposes of this section.

Sec. 24.1-242. Landscaping standards.

- (a) *Maintenance of landscaping and screening.* The property owner, or the owner's successors, shall be responsible for the maintenance of all landscaping, fencing, and screening materials required by this chapter or under the terms of other development approvals and shown on an approved landscape plan. Failure to maintain such landscaping, fencing and screening shall be deemed a violation of this chapter.
 - (1) All plant material and planting areas required by this chapter or other development approval shall be tended and maintained in a healthy growing condition, replaced when necessary, and kept free of refuse, litter, and debris. The replacement provision for landscaping shall apply only to plants that were required to be installed or that were awarded preservation credits as part of the site plan approval process.
 - (2) All fences, walls, and screening required by this chapter shall be maintained in good repair.
 - (3) In the event that any *required* landscaping material shown on the plan is subsequently replaced, the new material shall conform with the original approved landscape plan, or an approved amended plan, with respect to size and characteristics of the plantings. In meeting the terms of this section, the replacement

of mature trees which were counted toward the original landscape compliance shall be with trees of a similar species and of a size that meets the standards for new installations.

- (b) *Source standards.* All plant materials installed on a site shall have been grown in conformance with the American Standard for Nursery Stock, provided however that the zoning administrator may approve, in writing, the transplanting of trees or shrubs when such transplanting is done in accordance with accepted horticultural and silvicultural practices.
- (c) *Standards for berms and earth forms.* All berms and earth forms required or otherwise proposed for use shall conform with the following standards (See Figure II-5 in Appendix A):
 - (1) Design should include physical variations in height and alignment
 - (2) Landscape plant material installed on berms and earth forms should be arranged in an irregular pattern to accentuate variation and achieve a natural appearance.
 - (3) Location and design shall minimize disturbance to existing trees located on the site or adjacent thereto.
 - (4) Sight triangle provisions contained in this chapter and the subdivision ordinance shall be observed.
- (d) *Layout and design standards.* Except as may be otherwise required by this article, the following layout and design standards shall apply to all landscape plans:
 - (1) All trees installed to meet the requirements of this chapter shall be comprised of a combination of tree types (e.g., deciduous shade, evergreen, flowering ornamental) unless otherwise specified. No more than fifty percent (50%) of the required trees shall be of one type (i.e., deciduous, evergreen), nor shall more than twenty-five percent (25%) of the required trees be of a single species.
 - (2) All trees installed to meet the requirements of this chapter should be dispersed throughout the required planting areas, should be planted with a combination of single and groups of trees in a staggered, clustered or other pattern designed to complement the building and site design and promote appropriate views and sight lines. Trees shall not be installed in a continuous single row except where necessary and appropriate to meet screening or transitional buffer requirements.
 - (3) Shrubs, perennials and ornamental grasses installed to meet the requirements of this chapter should be installed in groupings and integrated with trees.
 - (4) Existing vegetation which is suitable for use in the landscape shall be preserved and used as required plantings to the maximum extent practicable. In no case shall any viable mature, heritage, memorial, specimen or significant tree be removed from any buffer area or landscape preservation easement except to accommodate necessary entrances or utility service to the site which cannot be relocated in an appropriate manner or where such preservation would create or perpetuate demonstrable public health, safety, or welfare hazards.
 - (5) Impervious surface area should be limited to the minimum amount necessary to accommodate the desired development and ensure appropriate levels of parking, traffic safety, and on-site circulation. The zoning administrator may require plan modifications which reduce the amount of impervious surface area without inhibiting site development and operation.

- (6) Modifications of the layout and design standards contained herein may be approved by the zoning administrator upon a determination that all of the following conditions exist.
 - a. The proposed layout and design furthers a readily discernible theme or complements the architectural style of the structures on site. The lining of an entrance road or driveway with trees of the same species in straight lines parallel to the road or driveway in an attempt to further a colonial or antebellum theme expressed in the architecture of the buildings or the use of massed ornamental plantings to highlight or complement a unique architectural or natural feature are examples.
 - b. The proposed layout and design provides landscaping which will have the same or similar screening impact, intensity, or variation throughout the year when viewed from adjacent properties or rights-of-way as that which would be required by strict interpretation of the standards contained in this subsection.
 - c. The proposed layout and design fully integrates and complements the existing trees to be preserved on the site.
 - (7) Any trees or shrubs installed or preserved on the site which exceed the minimum numerical requirements of this chapter shall not be subject to the species mixture, locational, maintenance or replacement requirements contained herein.
- (e) *Tree protection standards.*
- (1) Trees which are to be preserved on site shall be protected before, during and after the development process utilizing accepted practices. At minimum, the tree protection practices set out in the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992 shall be utilized.
 - (2) Trees selected for preservation in order to obtain landscaping credits shall be shown on the landscape plan and clearly marked in the field. In woodland areas, groups of trees shall be selected for preservation rather than single trees wherever possible.
 - (3) Trees and groups of trees which are to be preserved shall be enclosed by a temporary fence or barrier to be located and maintained five feet (5') outside of their dripline during construction. Such a fence or barrier shall be installed prior to clearing or construction, shall be sufficient to prevent intrusion into the fenced area during construction, and in no case shall materials, vehicles or equipment be stored or stockpiled within the enclosure. Within the fenced area, the topsoil layer shall not be disturbed except in accordance with accepted tree protection practices.
 - (4) The developer shall be responsible for notifying all construction personnel of the presence and purpose of clearing limits and protective fences or barriers and for ensuring that they are observed.
 - (5) Where grade changes in excess of six inches (6") from the existing natural grade level are necessary, permanent protective structures such as tree wells or walls shall be properly installed.
- (f) *Selection of trees for preservation.* In determining which trees shall be preserved during the development process, consideration shall be given to preserving trees which:
- (1) Are heritage, memorial, significant and specimen trees
 - (2) Complement the project design including the enhancement of the architecture and streetscape appearance

- (3) Can tolerate environmental changes to be caused by development (i.e., increased sunlight, heat, wind and alteration of water regime)
 - (4) Have strong branching and rooting patterns
 - (5) Are disease and insect resistant
 - (6) Complement or do not conflict with stormwater management and Best Management Practice designs
 - (7) Are located in required buffer areas
 - (8) Exist in natural groupings, including islands of trees
 - (9) Do not conflict with necessary utility, structure, parking area, roadway or sidewalk placements
 - (10) Have been recommended by the Virginia Department of Forestry, the York County Cooperative Extension Service or a qualified arborist or urban forester for preservation.
- (g) *Species standards.* All required landscape plant material proposed to be installed on the site shall be selected from the appropriate listing of recommended plant material contained in tables II-1 through II-7 in Appendix A and shall be of the minimum sizes noted provided, however, that alternative species may be used, upon certification by a certified landscape architect, landscape nurseryman or horticulturalist that said species have a rated hardiness and growth habit appropriate for the intended location. Particular attention shall be given to selecting trees and shrubs based on the area in which they will be installed (e.g., landscaped yards, parking areas, adjacent to buildings, etc.) and the lists contained in Appendix A will assist in the selection and review of a landscaping design. In addition, landscaping shall be selected and arranged with appropriate attention to future growth and maturity in order to accommodate visibility, safety and aesthetic considerations without need for future severe pruning or removal.

All landscaping required within this chapter shall conform with the following minimum size standards unless specifically modified by other provisions contained herein:

(h) *Numerical standards:*

- (1) Unless a greater or lesser number or ratio is specified elsewhere in this chapter as it pertains to specific development types and forms, the following planting ratios shall be required (all fractional calculations shall be rounded up to the next highest whole number):

<u>Planting Calculations</u>	
<u>Location</u>	<u>Landscape Credit Unit (LCU) Requirement</u> (required credits per 100 linear feet measured at lot line or building face)
Front Yard	40 credits per 100 feet
Side Yard(s)	10 credits per 100 feet
Building Perimeter	15 credits per 100 feet
Parking Lot	15 credits per 10 spaces

In the case of front yards, side yards and parking lots, a minimum of 50% and a maximum of 75% of the landscaping credits must be earned from trees. In the case of building perimeters, a minimum of 25% and a maximum of 50% of the landscaping credits must be earned from trees. Ornamental grasses and peren-

nials may be incorporated into the landscape design and shall be eligible for achieving up to 25% of the required/proposed shrubs credits.

- (2) Landscaping credits shall be awarded/earned based on the values established in the following table:

Landscape Credit Unit (LCU) Values			
<u>New Plant-</u> <u>ing</u>	<u>Deciduous</u> (Minimum Caliper)	<u>Evergreen or Orna-</u> <u>mental</u> (Minimum Height)	<u>LCU value</u>
<u>Trees</u>	3 inches	10 feet	9
	2.5 inches	8 feet	6
	2 inches	8 feet	5
	1.5 inches	6 feet	3
Shrub	18 inches height or spread		2
Ornamental Grasses or Peren- nial Beds	1 gallon size		1
<u>Existing</u> <u>Tree</u>	<u>Minimum Caliper</u>		<u>LCU value</u>
Mature	> 13 inches		15
Large	11 to 13 inches		12
Medium	6 to 10 inches		8
Small	N/A 3 to 5 inches		5

Sec. 24.1-243. Transitional buffers.

- (a) *Buffer types.* Transitional buffers of the following types shall be provided in the situations identified by the entries in the table contained in section 24.1-243(b) below. Where there is no entry for a particular combination of districts, no transitional buffer shall be required. The layout, design, and arrangement of the prescribed numbers and types of landscape materials shall be in accordance with the provisions of section 24.1-242 of this chapter. Plants shall be positioned to achieve the greatest benefit in terms of buffering the views of adjacent and potentially incompatible uses. The use of staggered double rows of plant materials is encouraged as a technique to achieve maximum screening benefits. Shrubs planted in the transitional buffer shall be of a type that will have a mature height of at least four (4) feet and when located within an existing or newly planted wooded area, shall be selected based on their suitability for shaded areas and any other growth-inhibiting characteristics of the subject area.
- (1) *Transitional Buffer Type 25:* shall consist of a strip of open space, a minimum of twenty-five feet (25') wide, landscaped with evergreen trees and shrubs to achieve a minimum of 0.75 landscape credits for every linear foot measured along the outside edge of the transitional buffer. A maximum of 70% of the landscape credits may be earned from shrubs.
- (2) *Transitional Buffer Type 35:* shall consist of a strip of open space, a minimum of thirty-five feet (35') wide, landscaped with evergreen trees and shrubs to achieve a minimum of (1) landscape credit for every linear foot measured along the outside edge of the transitional buffer. A maximum of 70% of the landscape credits may be earned from shrubs.
- (3) *Transitional Buffer Type 50:* shall consist of a strip of open space, a minimum of fifty feet (50') wide, landscaped with evergreen trees and shrubs to achieve a minimum of 1.25 landscape credits for every linear foot measured along the

outside edge of the transitional buffer. A maximum of 50% of the landscape credits may be earned from shrubs.

- (4) Upon specific written request, the zoning administrator may modify the landscaping requirements for transitional buffers which have been designed by a certified landscape architect in order to preserve mature trees, facilitate a clearly discernible development and planting theme, or complement the arrangement and type of surrounding landscaping provided, however, that the landscape architect must certify that the modified buffer will provide at least the equivalent buffering as would otherwise be required and that the buffering will be from landscape means (i.e., exclusive of fencing).
- (5) The zoning administrator may require supplementary fencing either temporarily or permanently in order to ensure that the appropriate degree of visual buffering and noise attenuation is achieved.

(b) *Transitional buffer provision matrix.* Transitional buffers shall be provided as follows:

TRANSITIONAL BUFFERS														
	RESIDENTIAL DISTRICTS								COMMERCIAL & INDUSTRIAL DISTRICTS					
	RC	R	R2	R1	R7	YV	PD	RM	N	W	LB	G	E	IL
	R	0	3		A		F		B	CI		B	O	IG
RC	X								25	25	25	25	35	50
RR		X							25	25	35	35	35	50
R20			X						25	25	35	35	50	50
R13				X					25	25	35	35	50	50
R7					X				25	25	35	35	50	50
YVA						X			25	25	25	35	50	50
PD							X		25	25	25	35	50	50
RMF								X	25	25	25	25	35	50
WCI	25	25	25	25	25	25	25	25		X			35	50
LB	25	35	35	35	35	25	25	25			X		35	50

GB	25	35	35	35	35	35	35	35	25				X			35
EO	35	35	35	35	35	35	35	35	25	25				X		25
IL	35	35	50	50	50	50	50	50	35	35	35	35			X	25
IG	50	50	50	50	50	50	50	50	50	50	50	50	35	25	25	X

- (c) *Buffer location standard.* Transitional buffers shall be installed along the zoning district lines at such time as any development or site modification requiring site plan approval on property abutting such district lines occurs. For the purposes of the following provisions, residentially-zoned property that has been subdivided into lots or that has an area of less than 2.5 times the minimum lot size for the district in which located shall be considered “developed” property, whether or not houses have been constructed on those lots. The location of transitional buffers shall be determined as follows:

- (1) Where both properties are currently undeveloped and one of the properties is residentially-zoned, the buffer shall be established entirely on the residentially-zoned property whenever it develops. In other situations where both properties are undeveloped, one-half (1/2) of the required transitional buffer shall be established on each of the parcels in the order in which developed. The width of the buffer on the respective properties may be modified by mutual agreement of the property owners involved as evidenced by a lawfully executed agreement(s) and easement(s) between the property owners specifying how the buffer is to be shared; such agreement(s) and easement(s) shall be recorded at the expense of the applicant in the name of the property owner(s) as grantor(s) in the office of the clerk of the circuit court. A landscape preservation easement shall be established over the area encompassed by the required buffer with the county and each property being granted rights under that easement.
- (2) Where one property has previously been lawfully developed, the required transitional buffer shall be provided entirely on the undeveloped property unless an agreement evidenced by a lawfully executed easement between the two property owners to share the buffer in a mutually agreeable manner is executed; such easement shall be recorded at the expense of the applicant in the name of the property owners as grantors in the office of the clerk of the circuit court. In the latter case, the zoning administrator shall ensure that the required buffer is installed in an acceptable manner and that a landscape preservation easement is granted over the buffer areas to the county and each of the subject properties.
- (3) Where the properties on both sides of the zoning line have been previously developed, but one is being redeveloped or otherwise modified to the extent that site plan review and approval is required, said property shall be responsible for providing ½ of the normally required transitional buffer as part of the redevelopment/site modification plan. The zoning administrator may grant relief from this requirement as provided in section 24.1-243(f).
- (4) Where the zoning district line is defined by the centerline of a right-of-way, the transitional buffer shall be installed along the right-of-way line on the property having the higher zoning intensity.

(The chart in subsection (b) above lists the zoning districts in order of intensity from least intense at the top and left to most intense at the bottom and right.)

- (d) *Design standards.*

- (1) Transitional buffers shall be continuous except where driveways or other breaks are necessary. To the extent possible, driveways should be curved in order to preserve the view-obstructing qualities of the transitional buffer area. Multiple breaks of the transitional area shall not be permitted except to provide an efficient and safe site access and internal circulation pattern.
 - (2) Transitional buffers shall not be used for accessory structures, storage, or off-street parking or loading.
 - (3) Utility easements shall not be located within transitional buffers except those which cross the buffer at a right angle. Where the zoning administrator determines that a certain utility location or configuration which is essential conflicts with this standard, the administrator may, in writing, modify this requirement by imposing different standards to achieve an equivalent buffering effect.
- (e) *Relationship between transitional buffer and other elements.* Transitional buffers shall relate to other required design elements as follows:
- (1) *Yard requirements and setbacks.* Where a transitional buffer is required along a property line, the minimum yard and setback along said property line shall be the greater of the yard and setback required for the particular zoning district or the width of the transitional buffer.
 - (2) *Landscape yards.* Landscape yards may be incorporated into the transitional buffer and no additional landscaping above and beyond that required for the transitional buffer shall be necessary.
- (f) *Modification of buffer standards.*
- (1) Where the zoning district boundary line which requires a transitional buffer follows a public street or highway right-of-way of less than ninety feet (90') in width, the following shall apply:
 - a. Where an industrial district abuts a residential district, the normally applicable transitional buffer shall be provided and may not be reduced or modified in any way;
 - b. In any situation other than an industrial district abutting a residential district, the required transitional buffer may be reduced to one-half (1/2) the normally required width, or twenty feet (20') , whichever is greater. In such cases, the landscaping and design standards for the required transitional buffer yard may be modified to include appropriate trees and shrubs which visually screen all parking, loading, and storage areas, but not the buildings; however, in no case shall the planting ratio be less than that required for a Type 25 Buffer.
 - (2) Where the zoning district boundary line which requires a transitional buffer follows a public street or highway right-of-way ninety feet (90') or greater in width, no transitional buffer shall be required.
 - (3) Where adjacent properties of differing zoning intensities are being developed in a cohesive, planned and coordinated manner under the equivalent of a master development plan, the zoning administrator may waive or reduce any transitional buffer required along zoning district lines which are internal to the development.
 - (4) Where the adjacent property giving rise to the need for a transitional buffer is under public ownership, is likely to remain under public ownership, and is managed for watershed purposes, the otherwise required transitional buffer shall be waived. Where the adjacent public land is managed as public park

land, the zoning administrator may modify or waive the transitional buffer requirement consistent with the public interest in the park land.

- (5) Where property on which a transitional buffer is required has already been developed in a manner which precludes full implementation of these requirements, the zoning administrator may modify these requirements on a case-by-case basis to achieve as much of the desired buffering as is possible. In making such modifications, the zoning administrator may consider balancing the existing development with the needs of the community at large. Modifications could, for example, include the use of berms or increased numerical planting requirements in lieu of the otherwise required transitional buffer width.
- (6) Where the zoning district boundary along which a transitional buffer is required traverses environmentally sensitive land or water features, the zoning administrator may modify the location, layout, arrangement, and design in an appropriate manner which balances the buffering requirements with the environmental resources.
- (7) Where a properly engineered and designed landscaped berm is proposed to supplement the screening / buffering qualities of a required transitional buffer, the zoning administrator may authorize up to a 25% reduction in the required buffer width. Minimum heights for berms proposed for this purpose shall be as follows:

Type 25 Buffer - Minimum Height: 2 feet

Type 35 Buffer - Minimum Height: 3 feet

Type 50 Buffer - Minimum Height: 4 feet

- (g) *Transitional buffers abutting properties in adjacent jurisdictions.* Where a commercial or industrial district abuts property in an adjacent locality which is in a residential zoning district and used as such, a transitional buffer shall be provided as if the abutting property were classified RC (resource conservation).

Sec. 24.1-244. Landscape yards.

- (a) All proposed new developments shall include landscape yards around the perimeter of the site and the buildings erected on the site in order to facilitate adequate control and management of stormwater runoff and of non-point source pollution as well as to enhance the aesthetics of the project. In the case of expansions or redevelopment of existing development, perimeter landscape yards of the specified size, or as near to that size as determined practical by the zoning administrator, shall be provided on all sides of the site adjacent to such expansion or redevelopment.
 - (1) The minimum dimensions of landscape yards around the site perimeter shall be twenty feet (20') for front yards and ten feet (10') for side and rear yards, to be measured from the lot line or, where drainage ditches or structures are located or are proposed to be located along lot lines, from the top or inside edge of the open ditch or structure. Landscape yards, as required herein, may include driveways providing access to other parcels in an effort to promote unified project design.
 - (2) The zoning administrator may approve the transfer of up to fifty percent (50%) of the required landscape yard located behind the rear of the principal building on the site to the area in front of the principal building on the site provided that all of the following conditions are met:
 - a. No remaining landscape yard shall be less than five feet (5') in width;
 - b. The total amount of landscaped open space on the site is not less than it would be without the transfer; and

- c. No required transitional buffer is reduced.
- (3) Landscape yards shall be landscaped with trees, shrubs, bushes, plant material and ground cover in accordance with the provisions of section 24.1-242 of this chapter. If transfers have occurred, the transferred area shall be landscaped in accordance with the requirements for the area from where it was transferred.
- (b) A landscaped open space strip a minimum of ten feet (10') in width shall be provided adjacent to and surrounding all buildings and shall be landscaped in accordance with the provisions of section 24.1-242 of this chapter. This open space strip may be bisected by necessary entrances to the building and may include bicycle accommodations and pedestrian sidewalks serving the entrances provided that no more than fifty percent (50%) of the open space strip may be comprised of impervious surfaces. In no case shall off-street parking be located within ten feet (10') of any building on the site.
 - (1) That portion of this landscaped open space required at the rear of the principal building may be transferred to the perimeter landscape yard in order to provide additional screening and buffers for adjacent streets or developed properties.
 - (2) Where the proposed structure, by reason of its intended use and market orientation, requires vehicular access into the front, sides or rear of the building, the zoning administrator may approve the transfer of the required landscaped open area adjacent to the structure to the perimeter landscape yard in order to provide additional screening and buffers for adjacent streets or developed properties. At least fifty percent (50%) of the area transferred shall be transferred to that portion of the perimeter area located in front of the principal building on the site.
 - (3) If transfers have occurred, the transferred area shall be landscaped in accordance with the requirements for the area from where it was transferred.

Sec. 24.1-245. Greenbelts.

- (a) Greenbelts shall be provided contiguous to the street right-of-way along the following roads in accordance with the specified minimum widths:
 - (1) Bypass Road (Route 60) - 35 feet
 - (2) Denbigh Boulevard (Route 173) - 35 feet
 - (3) Fort Eustis Boulevard (Route 105) - 35 feet
 - (4) Hampton Highway (Route 134) - 35 feet
 - (5) Merrimac Trail (Route 143) between I-64 at Exit 230 (Camp Peary/Colonial Williamsburg) and Queen Creek - 45 feet
 - (6) Penniman Road (Route 641) between the Colonial Parkway and Route 199 - 45 feet
 - (7) Route 132 - 45 feet
 - (8) Route 199 - 45 feet
 - (9) Victory Boulevard (Route 171) - 35 feet
 - (10) East Rochambeau Drive from Oaktree Road (west) intersection to Mooretown Road and from Mooretown Road to dead end - 45 feet

- (11) Mooretown Road from Lightfoot Road to a point 1,400 feet south of its intersection with Clark Lane - 45 feet
- (12) Mooretown Road from Airport Road to Waller Mill Road - 45 feet
- (13) Lightfoot Road from Route 60 to Rochambeau Drive (west) - 45 feet, except where the parcel also has frontage on Route 199, in which case the Lightfoot Road greenbelt shall be 35 feet.
- (14) Rochambeau Drive (west) from Lightfoot Road to James City County line - 45 feet

The 10-foot perimeter landscape strip normally required at the rear of buildings by Section 24-244(b) of this Chapter shall not be required on parcels subject to the 45-foot Greenbelt provision.

- (b) Along the Colonial Parkway, a greenbelt of no less than three hundred feet (300') from the nearest edge of the roadway shall be provided. This may include property owned by the National Park Service.
- (c) The greenbelt shall be left in an undisturbed natural state, unless the board, after conducting a duly advertised public hearing, authorizes clearing or development. Un-vegetated or under-vegetated greenbelts shall be landscaped in accordance with the following planting requirements as if they were front yards:

35 foot Greenbelt	70 landscape credits per 100 linear feet
45 foot Greenbelt	90 landscape credits per 100 linear feet

Normally required front yard landscape credits may be counted toward these requirements. Nothing in this section however, shall be interpreted to preclude the following activities within greenbelts: (1) the planting of additional trees, shrubs or groundcovers, or the maintenance thereof; (2) the construction and maintenance of bicycle and pedestrian facilities; (3) the establishment, construction, and maintenance of necessary entrances to the site; (4) limited clearing of underbrush, nuisance plants, dead or diseased plants/trees, or limbs/understory necessary to provide reasonable sight lines to a commercial establishment; or (5) the installation of utilities necessary to serve the development provided that the crossing of the greenbelt minimizes disturbance to the greatest extent possible; or (6) the installation of signs which do not require disturbance of existing trees, except to the extent necessary to open limited sight lines for the signs. All of these may occur under the terms of an approved plan.

- (d) If approved, modifications shall preserve the feeling and sense of the natural character of the greenbelt as it currently exists and application for modifications shall contain pre-development and post-development renderings. The cost of advertising and conducting public hearings to consider modifications shall be borne by the developer making the request.
- (e) Greenbelts shall be open space that is owned and maintained by a property owners' association, conservation land trust, or equivalent entity. Alternatively, a landscape preservation easement granted to the county or an appropriate land trust may be utilized.
- (f) Commercial properties fronting greenbelt roads shall be permitted to open limited sight lines which allow indirect views of buildings, but generally block views of parking. Such sight line clearing shall be shown on the landscape plan for the site which shall include both plan and perspective views.
- (g) For purposes of calculating residential densities, the area encompassed by the greenbelt shall be considered as developable acreage in such computations.

ARTICLE VI. OFF-STREET PARKING AND LOADING**Sec. 24.1-600. Applicability.**

In any district, all structures erected or enlarged and all uses established or expanded, shall provide off-street parking and loading spaces in accordance with the requirements established herein.

Sec. 24.1-601. General provisions.

- (a) All required off-street parking or loading spaces shall be maintained for parking or loading use for as long as the principal use for which such spaces were established shall remain.
- (b) No enlargement of a building, structure or use shall reduce the number of existing parking or loading spaces below the minimum number required unless provisions are made elsewhere on the premises for replacement spaces. Additional parking or loading spaces shall be provided to accommodate any additional demand created by such enlargement.
- (c) In the event more than one principal use which requires parking or loading space is erected or established on the same premises, parking or loading space shall be provided on the basis of the sum of the required spaces for each use, except in the case of approved planned developments. For the purpose of this section, a shopping center shall be considered a principal use and except for theaters or bingo halls located within such centers, parking requirements need not be calculated separately for each establishment therein.
- (d) The parking or loading requirements established herein shall be superseded if different requirements are established by the board as a condition of other approvals required by this chapter.

Sec. 24.1-602. Location of parking.

- (a) The off-street parking facilities required by this article shall be located on the same lot or parcel of land or within the same project and in reasonable proximity to the uses or structures that they are intended to serve. For nonresidential uses the zoning administrator may authorize an alternate or cooperative location, subject to the following:
 - (1) An alternate location is one that provides parking only for the use in question, but on a different lot or parcel.
 - (2) A cooperative location is defined as one that provides parking for two (2) or more uses, and has combined parking spaces equal to the sum required for the separate uses. The hours of operation and parking demand of such uses shall be considered and where sufficient off-set in parking demand occurs, the zoning administrator may authorize a reduction in the total number of spaces required. It shall be the applicant's responsibility to provide documentation in support of such a reduction.
 - (3) Such parking spaces shall be conveniently and safely accessible to pedestrians.
 - (4) All such parking spaces shall be on property zoned for the uses which require the parking spaces or for more intensive uses.
 - (5) The right to permanently use such property for parking shall be established by deed, easement, lease or similar recorded covenant or agreement, shall be ap-

proved as to form and content by the county attorney, and shall be recorded in the clerk's office of the circuit court. (See sample agreements in Appendix B)

- (6) Should such off-street parking spaces become unavailable for use at some future time, an equal number of parking spaces shall be constructed and provided on either the primary site or by another off-site arrangement meeting the requirements of this article. Failure to provide or construct such replacement parking spaces within ninety (90) days from the date on which the use of the previously available off-street spaces was terminated shall be a violation of this chapter.
- (b) Unless the zoning administrator approves otherwise for good cause shown, parking for customers shall be located no farther from the main entrance(s) of the use it is to serve than indicated below:
 - Automobile - 750'
 - Handicapped -100'
- (c) Location of all or the majority of off-street parking to the side or rear of the principal building is strongly encouraged so as to enhance opportunities for landscaping in front of buildings and complement site architecture.

Sec. 24.1-603. Access to off-street parking.

- (a) Every parking space shall afford satisfactory ingress and egress for a motor vehicle without requiring another motor vehicle to be moved, except for the following:
 - (1) Parking spaces for single family detached, duplex and townhouse dwellings where the parking spaces are located on the same lot as the dwelling unit. This exception shall not extend to required parking spaces for accessory apartments in single family detached dwellings, or for visitor parking in townhouse developments, or for parking required in conjunction with home occupations.
 - (2) Stacking spaces for dropping off or picking up passengers where the duration of parking is ten (10) minutes or less on average.
- (b) Valet parking arrangements may be authorized by the zoning administrator and shall not be subject to this section.

Sec. 24.1-604. Calculating the number of required off-street parking and loading spaces.

- (a) In calculating the number of required off-street parking spaces the following rules shall govern:
 - (1) *Floor area* shall mean the gross floor area of the specific use measured from the exterior faces of exterior walls or from the center line of walls separating two attached buildings. Unless otherwise specified, floor area shall include associated corridors, utility rooms and storage space.
 - (2) Parking spaces required on a per employee or per person basis in the standards which follow shall be based on the maximum number of employees or persons on duty or residing, or both, on the premises at any one time, or the maximum occupancy load (based on Building and Fire Codes) of the building or use, whichever is greater. Overlapping demand for parking spaces at shift changes shall be considered in determining these maximum loads.
 - (3) Where fractional spaces result, the parking or loading spaces required shall be rounded to the nearest whole number.

- (4) The parking or loading space requirement for a use not specifically mentioned shall be the same as required for a use of a materially similar nature, as determined by the zoning administrator. A site-specific parking analysis and plan may be required by the zoning administrator to establish parking demands for uses not listed and for which the zoning administrator determines that a materially similar use listing does not exist herein.
- (5) Except for shopping centers, in the case of mixed uses including mixed uses within a single building, the parking spaces required shall equal the sum of the parking space requirements of the various uses computed separately. In the case of multiple uses of a single building where uses are exclusive for a period of time, parking requirements shall be based on the maximum requirements from among the multiple uses in each category.
- (b) Applicants may have a site- and use-specific parking and/or loading space analysis and plan prepared by a professional qualified to perform such studies for submission to the county for use in lieu of the numerical parking or loading space standards contained in this article. Such an analysis and plan shall be based on parking/loading demands at comparable local uses or establishments taken within six (6) months of the date of submission and shall include comparisons with Institute of Transportation Engineers (ITE) documents and manuals. The analysis and plan may include provisions for a reasonable number of compact car spaces in lieu of full-sized spaces. In addition to the above-noted adjustments, the parking analysis may also propose, and the zoning administrator may approve, the construction of a portion of the required parking for a site in an "overflow" or "peak demand" lot. Such lots may be designed with grid paving systems that allow grass to grow within the paver voids and curbing and wheel stops may be eliminated from this portion of the parking lot.

The professional qualifications of the preparer shall accompany the report. Upon approval by the zoning administrator, the site-specific parking or loading plan shall guide the development for the site, provided, however, that if the plan provides for fewer parking or loading spaces than would otherwise be required, an area sufficient to accommodate one-half (1/2) of the difference shall be reserved for a period of five (5) years and maintained as landscaped open space during that time. A reserved area shall not be required where the site and use-specific parking analysis and plan refers to a use for which a specific or comparable listing is not provided in section 24.1-608.

- (c) Business vehicles shall be parked on the site in properly paved and located spaces. The owner of the premises shall be responsible for accommodating business vehicle parking needs without adversely impacting the availability of parking for customers, clients and employees. Adverse impact shall be considered to include instances where, due to inadequate space, business or customer vehicles must park in travel aisles, driveways, unpaved areas or other inappropriate locations as determined by the zoning administrator.

Sec. 24.1-605. Off-street loading spaces.

- (a) Spaces designated for off-street loading shall not be counted toward the required number of off-street parking spaces, except where specifically approved by the zoning administrator in consideration of appropriate documentation that loading space needs will occur when parking space demand is not at its peak.
- (b) Off-street loading spaces shall be located so that there is sufficient room for the turning and maneuvering of vehicles using loading spaces.
- (c) All off-street loading spaces including aisles and driveways leading to them shall be constructed of concrete, asphalt or other equivalent permanent, dustless surface material.
- (d) Off-street loading spaces may be incorporated into the overall design and layout of

parking and circulation systems provided that no individual parking spaces will be encroached upon, except as authorized in subsection (a) above, and that vehicles utilizing such loading spaces will not interfere with vehicular circulation on the site or on adjacent public rights-of-way.

- (e) Each off-street loading space shall be not less than twelve feet by fifty feet (12' x 50') in dimension with a vertical clearance of not less than fifteen feet (15'). The zoning administrator may authorize a reduction in the length of the required loading space in consideration of the characteristics of the use and appropriate documentation of typical delivery vehicle traffic.

Sec. 24.1-606. Minimum off-street parking and loading requirements.

Off-street parking spaces and loading spaces shall be provided in accordance with the minimum standards set forth in the following tables. These standards prescribe the minimum amount of parking and loading space that must be provided in conjunction with various uses and nothing shall prohibit the installation of more than the required minimums, provided however, that an additional twenty (20) landscape credits shall be provided/earned on the site for every ten (10) spaces in excess of the minimum number. Such additional landscaping shall be installed in the parking lot or around its perimeter

- (a) Category 1 - *Residential and related uses.*

USE	OFF-STREET PARKING SPACES	OFF-STREET LOADING SPACES
(1) Dwelling: single-family detached & duplex	Two (2) spaces per unit	None.
(2) Dwelling: single-family attached (townhouse & multiplex)	Two (2) spaces per unit; plus One (1) space per three (3) units for visitor parking	None.
(3) Dwelling: multi-family	One and one-half (1 1/2) spaces per unit; plus One (1) space per three (3) units for visitor parking.	None.
(4) Manufactured Home on individual lot	Two (2) spaces per unit.	None.
(5) Manufactured Home Park	Two (2) spaces per unit; plus One (1) space per three (3) units for visitor parking.	None.
(6) Rooming, Boarding, Lodging House, Bed and Breakfast, Tourist Home	Two (2) spaces; plus One (1) space per each sleeping room.	None.
(7) Group Home	Three (3) spaces, plus One (1) space per each two (2) beds:	None

- (b) Category 2 – Agriculture, Animal Keeping and Related Uses

USE	OFF-STREET PARKING SPACES	OFF-STREET LOADING SPACES
(1) Plant Nursery w/ retail sales	One (1) space for every 200 square feet of indoor retail and office space; plus One (1) space for every 5,000 square feet of greenhouse or outdoor display area	none

(2) Plant Nursery – wholesale only	One (1) space for every 350 square feet of office space; plus One (1) space for every 15,000 square feet of greenhouse or outdoor display	none
(3) Animal Hospital / Vet Clinic	One (1) space for every 350 square feet of floor area, excluding kennel space; plus One (1) space per examining room	none
(4) Commercial Stables	One (1) space for every five (5) stalls	none
(5) Farmer's Market	Two (2) spaces, plus One (1) space for every 1,000 square feet of outdoor/open air display area	One (1) space

(c) Category 3 – Home Occupations (Refer to Article II – Division 8)

(d) Category 4 – Community Uses

<u>USE</u>	<u>OFF-STREET PARKING SPACES</u>	<u>OFF-STREET LOADING SPACES</u>
(1) Meeting halls, Clubhouses for Private/fraternal/civic clubs	One (1) space for every four (4) seats or for every 60 square feet of assembly area	One (1) space
<u>Recreational / social facilities in</u> conjunction w/ residential development, including community pools	One (1) space for every eight (8) persons capacity of the building or facility based on maximum occupancy limits	None

(e) Category 5 – Educational Uses

<u>USE</u>	<u>OFF-STREET PARKING SPACES</u>	<u>OFF-STREET LOADING SPACES</u>
(1) Day care center, nursery school, child care center	One and one-half (1.5) spaces per classroom or teaching station; plus One (1) stacking space for each five (5) students the facility is licensed to enroll.	none
(2) Schools: Elementary and Middle Schools	Two and one-half (2½) spaces per classroom.	One (1) space.
(3) High School	One (1) space per classroom or teaching station; plus One (1) space per five (5) students at capacity.	One (1) space
(4) Vocational School	One (1) space per each two (2) students in the maximum projected enrollment capacity; plus One (1) space per classroom or teaching station.	One (1) space

(f) Category 6 - Institutional Uses

<u>USE</u>	<u>OFF-STREET PARKING SPACES</u>	<u>OFF-STREET LOADING SPACES</u>
(1) Church, temple, synagogue or similar place of worship	One (1) per each four (4) fixed seats in main assembly area; plus One (1) space per each sixty (60) square feet of assembly area without	None

	fixed seats.	
(2) Hospital	One (1) space per every two (2) patient beds; plus One (1) space for every 350 square feet of administrative office space	One (1) space; plus one (1) for every loading dock/bay
(3) Nursing Home	One (1) space for every two (2) patient beds	One (1) space
(4) Emergency / First Care Clinic	Two (2) spaces per examining room; Plus One (1) space per 350 square feet of office/administrative space	None

(g) Category 7 – Public and Semi Public Uses

USE	OFF-STREET PARKING SPACES	OFF-STREET LOADING SPACES
(1) Conference Center, Convention hall, auditorium, etc.	One (1) space per each four (4) fixed seats or seating spaces; plus One (1) space per each 60 square feet of assembly area without fixed seats.	None.
(2) Post Office	One (1) space for every 350 square feet of gross floor area	One (1) space
(3) Libraries, museums and similar cultural facilities	One (1) space for each 300 square feet of gross floor area, but in no case less than ten (10) spaces.	None
(4) Government Offices	One (1) space per 350 square feet of gross floor area	None
(5) Parks/recreation facility	As determined based on National Parks and Recreation standards and recommendations for the type of facility	None
(6) Animal Shelter	One (1) space per 350 square feet of floor area, excluding kennels; but not less than five (5) spaces	None

(h) Category 8 – Temporary Uses

USE	OFF-STREET PARKING SPACES	OFF-STREET LOADING SPACES
(1) Model Home Display Parks	Two (2) spaces per model home displayed	None
(2) All other Temporary Uses	Refer to Article 4, Division 7	

(i) Category 9 – Recreation and Amusement Uses

USE	OFF-STREET PARKING SPACES	OFF-STREET LOADING SPACES
(1) Theater - indoor	Stand-alone: One (1) space per four (4) seats. In Shopping Center: One (1) space per eight (8) seats.	None
(2) Bingo Hall	One (1) space for each four (4) fixed seats or for each sixty (60) square feet of open assembly area	None
(3) Bowling Alley	Seven (7) spaces per lane; plus One (1) space per 100 square feet of	One (1) space

	restaurant and lounge space.	
(4) Marinas, dry-stack boat storage facility	One (1) space per five (5) berths; plus One (1) space per 500 square feet of dry boat storage area; plus Two (2) spaces for every house boat mooring space.	One (1) space.
(5) Country clubs, golf courses	One (1) space per 400 square feet of floor area in meeting rooms, lounges or similar assembly area; plus Five (5) spaces per golf hole	None
(6) Indoor Amusement Centers, Arcades, etc.	One (1) space for every 200 square feet of gross floor area	None
(7) Golf Driving Range	Three (3) spaces; plus One (1) space per tee	None
(8) Recreational or amusement establishments other than those specifically listed above	One (1) space per four (4) seats for fixed-seat facilities; or, One (1) space for every four (4) persons capacity based on the maximum occupancy load for the facility;	One (1) space if food or beverage services are offered

(j) Category 10 – Commercial / Retail Uses

USE	OFF-STREET PARKING SPACES	OFF-STREET LOADING SPACES
(1) Furniture, carpet, and appliance, stores; lumberyard and building materials; home improvement centers	One (1) space per 500 square feet of floor area.	One (1) space; plus One (1) space per loading bay or dock
(2) Convenience store	One (1) space per 200 square feet of gross floor area	One (1) space
(3) All other Category 10 Commercial / Retail Uses	One (1) space per 250 square feet of gross floor area; plus One (1) space for every 500 square feet of open/outdoor display or sales area	One (1) space.

(k) Category 11 – Business / Professional Service

USE	OFF-STREET PARKING SPACES	OFF-STREET LOADING SPACES
(1) Funeral home or mortuary	One (1) space per four (4) seats or seating spaces in the main chapel or parlor;	None
(2) Financial institution with drive-in windows	One (1) space per 350 square feet of floor area; plus Eight (8) stacking spaces for the first drive-in window; plus Two (2) stacking spaces for each additional window.	None
(3) Financial institutions without drive-in windows.	One (1) space per 350 square feet of floor area.	None
(4) Freestanding ATM	Four (4) spaces per machine	None
(5) Medical or dental clinic/office	Two (2) spaces per examination or treatment room; plus One (1) space per 350 square feet of administrative office space.	None
(6) Offices – business or professional	One (1) space per 350 square feet of floor area but in no case less	One (1) space per building or per building

	than three (3) spaces.	grouping capable of being served by a single space.
(7) Personal Service Establishments (Barber/beauty shops, apparel services, tattoo shops, etc.)	One (1) space per 200 square feet of gross floor area, or two (2) spaces per client chair, whichever is greater	None
(8) Motel, hotel, motor lodge	One (1) space per sleeping room or suite for first 100 units; plus <ul style="list-style-type: none"> 0.9 spaces per sleeping room or suite for units 101 through 200 0.8 spaces per sleeping room or suite for units 201 through 300 0.7 spaces per sleeping room or suite for units in excess of 300; plus One space for each 25 square feet of floor area used for meeting rooms and for the preparation, serving or consumption of food or beverage, but not including storage and refrigeration areas.	One (1) space; plus One (1) additional space for on-site restaurant
(9) Timeshare resort	1.3 spaces per unit.	None
(10) Restaurant: Sit Down and Brew Pub	One (1) space per 100 square feet of total gross floor area; NOTE: <i>Outdoor dining area shall be included in the calculations.</i>	One (1) space
(11) Restaurant: Fast Food or Drive-In	One and one-half (1 1/2) spaces per 100 square feet of gross floor area inclusive of outside dining area; plus Eleven (11) stacking spaces for the first drive-in window; plus Three (3) stacking spaces for each additional drive-in window.	One (1) space
(12) Restaurant: Drive-Through Only	Five (5) spaces; plus Eighteen (18) stacking spaces for the first drive-in window; plus Three (3) stacking spaces for each additional drive-in window.	One (1) space
(13) Nightclubs, bars, taverns, dance halls	One (1) space for every 60 square feet of floor area, excluding kitchen areas	One (1) space
(14) Commercial reception hall or conference center	One (1) space for every four (4) seats or sixty (60) square feet of assembly area	One (1) space
(15) All other Category 11 uses	One (1) space per 350 square feet of gross floor area	One (1) space, unless waived by the zoning administrator in consideration of the specific nature of the use.

(I) Category 12 – Motor Vehicle / Transportation

USE	OFF-STREET PARKING SPACES	OFF-STREET LOADING SPACES
(1) Automobile service stations, gasoline sales, auto repair garage, auto body/ painting facility	One (1) space per each 500 square feet of enclosed office, sales or service floor area; plus Two (2) spaces per service bay, but in no case less than five (5) spaces.	None

(2) Car Wash	Two (2) spaces, plus Four (4) stacking spaces per bay or stall;	None
(2) Vehicle sales, rental and service establishments (Auto, truck, heavy equipment, boats)	One (1) space per 500 square feet of enclosed office, sales/rental floor area; plus One space per two thousand five hundred (2500) square feet of open sales or rental display lot area; plus Two (2) spaces per service bay;	One (1) space
(4) All other Category 12 Uses	One space per 350 square feet of office/administrative area, plus Two (2) spaces per service bay, Loading or boarding pad or similar facility	None

(m) Category 13 – Shopping Centers

USE	OFF-STREET PARKING SPACES	OFF-STREET LOADING SPACES
(1) Shopping Center, but excluding theaters and bingo halls	Neighborhood Center: Three (3) spaces per 1,000 square feet of gross leasable floor area; Community and Specialty Center: Four (4) spaces per 1,000 square feet of gross leasable floor area.	One (1) space; plus One (1) space per 20,000 square feet of gross leasable floor area. One (1) space; plus One (1) space per 20,000 square feet of gross leasable floor area.

(n) Category 14 – Wholesaling / Warehousing

USE	OFF-STREET PARKING SPACES	OFF-STREET LOADING SPACES
(1) Seafood receiving, packing, storage	One (1) space for every 500 square feet of processing or office area	One space; plus One space per loading bay or dock
(2) Mini-storage warehouses	One and one-half (1½) spaces for each ten (10) cubicles; plus Two (2) spaces for the manager's quarters or office.	None
(3) Warehousing, distributing, or wholesale trade establishment and all Category 14 uses	One (1) space for each 10,000 square feet of floor area; plus One (1) space for each 350 square feet of office, sales or similar space; or, subject to appropriate documentation and approval of the zoning administrator, one and one-third (1.3) spaces for every employee on the largest shift.	One space; plus One (1) space per loading bay or dock

(o) Categories 15, 16 and 17 – Limited Industrial Uses, General Industrial Uses, and Utilities

USE	OFF-STREET PARKING SPACES	OFF-STREET LOADING SPACES
(1) All Uses	One (1) space for every 350 square feet of office or admin-	One (1) space for every 20,000 square

	istrative area; plus One (1) space for every 700 square feet of production or work floor area; plus One space for every 5,000 square feet of ware- House storage area, or subject to appropriate documentation and approval of the zoning administrator, one and one-third (1.3) spaces for every employee on the largest shift.	feet
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Sec. 24.1-607. Off-street parking design standards.

- (a) Required off-street parking spaces for single-family detached and duplex dwellings shall be a minimum of nine feet by eighteen feet (9' x 18') in dimension with a driveway which is constructed with an all-weather surface, affording safe and convenient access, and passable by emergency vehicles at all times.
- (b) Except as provided in section 24.1-607(e) all other parking spaces intended for use by the general public shall have minimum dimensions of nine feet by eighteen feet (9' x 18'), or ten (10) feet by twenty (20) feet if parallel. Where separate employee spaces are designated on the site and are situated in some manner as to be clearly distinguishable from the remaining spaces, such spaces may be designed with minimum dimensions of eight feet by sixteen feet (8' x 16').
- (c) Where parking spaces are arranged along a walkway, median or landscaped island of at least nine (9) feet in width, a one and one-half foot (1.5') overhang credit may be deducted from the required length of the parking space. Where this credit is used, the adjacent landscaped island or walkway shall be increased in width by an equal amount.
- (d) All permanent off-street parking areas proposed in conjunction with any development other than single-family detached or duplex dwellings which is subject to the requirements of this chapter shall comply with the following design standards:
 - (1) Parking areas shall be constructed of concrete, asphalt or other equivalent permanent, dustless surface such as cobblestone, Belgian block, brick, grid pavers, interlocking pavers, or similar surface material.

The above provision notwithstanding, the zoning administrator may approve unpaved or gravel parking areas provided that a specific request, detailing the environmental conditions giving rise to the request, is submitted in writing at the time of plan submission. Said unpaved or gravel parking areas must be an integral part of an overall stormwater management plan for the project.

- (2) Parking lots shall be set apart from landscaped areas by a permanent curb or wheel stop. In the event a parking lot is adjacent to a parking lot on another parcel and both lots are served by a joint entrance, the zoning administrator may approve a transfer of the required landscaped strip along the common property line to another location on the site. In such situations, fifty percent (50%) of the area to be transferred shall be added to the landscaping otherwise required in front of the principal building on the site.
 - (3) Traffic aisles in parking lots shall conform with the following criteria:

Angle of Parking	Traffic Direction	Aisle Width*
parallel	One-Way	12 feet
30-degree °	One-Way	12 feet
45-degree °	One-Way	12 feet
60-degree °	One-Way	18 feet
90-degree °	Two-Way	24 feet
*Minimum width of traffic aisles in parking lots for two-way traffic shall be twenty-four (24) feet. Additional width may be required if needed for access of emergency vehicles.		

- (4) Parking lots shall be designed and constructed so that spaces are grouped into bays separated by landscaped traffic islands each of which shall be surrounded by a curb. There shall be no more than fifteen (15) parking spaces in a row without an intervening landscaped island, provided however, that the zoning administrator may approve alternative arrangements where landscaped islands in other parts of the parking lot are enlarged to exceed the minimum dimensions specified below. Such islands and bays shall be designed to provide a clear delineation of circulation patterns, guide vehicular traffic, prevent unsafe diagonal movements through the parking lot, break large expanses of pavement into sub-areas to improve both the appearance and climate of the parking lot, minimize glare and noise, and delineate safe pedestrian walkways. The minimum size of any island shall be one hundred fifty (150) square feet with a minimum width of nine feet (9').
- (5) A minimum of seven and one-half percent (7.5%) of the total surface area in parking lots shall be maintained in traffic islands or other interior planting areas within the lot including all traffic islands provided or required herein. Any landscaping within or around the traffic aisles of such parking areas shall be maintained so as to prevent visual obstructions between the height of three feet (3') and six feet (6') where such obstructions could impair vehicular safety.
- (6) Landscaping of traffic islands and circulation control improvements, as required above, shall be provided in accordance with article II, division 4 and the following specifications:
 - a. Existing mature trees and natural vegetation shall be protected and preserved during and after the development process in accordance with the provisions of section 24.1-242 wherever possible, particularly around the perimeter of parking areas.
 - b. At least fifty percent (50%) of the trees installed in parking lots shall have a minimum caliper of two and one-half inches (2-1/2").
 - c. Trees within landscaped strips located adjacent to parking spaces shall be placed at least four feet (4') from the face of curbs or wheel stops or at the corners of parking spaces in order to protect plant materials from damage.
 - d. The specific types and locations of landscaping materials selected for planting shall conform to the provisions of article II, division 4 of this chapter and shall be reasonably dispersed throughout the parking area.
- (7) Sidewalks shall be provided to facilitate safe and convenient pedestrian movements within and between such parking areas and the establishments which

they serve. Sidewalks shall be designed in accordance with all applicable barrier-free access standards as specified by the Virginia Uniform Statewide Building Code and the Americans with Disabilities Act.

- (8) Outdoor lighting shall be installed at appropriate locations to provide illumination for parking areas and pedestrian, bicycle and vehicular circulation routes and especially to establishments which will be patronized during non-daylight hours.
 - (9) Parking spaces for the physically handicapped, including lift-equipped van-accessible spaces, shall be provided and labeled on the plan in accordance with the numerical and design standards established for the physically handicapped and aged, by the Virginia Uniform Statewide Building Code and as specified in the Americans with Disabilities Act.
 - (10) All parking lots shall be visually screened from public street rights-of-way by means of landscaping which provides a visual screen of the parking lot throughout the year. Unless otherwise required by this chapter or by the terms of a special use permit, the buildings on the site need not be entirely screened.
 - (11) Outdoor storage and display shall not be permitted in *required* parking spaces. If outdoor storage and display is to be located in non-required parking areas, such area shall be delineated on the site plan and shall be located so that it does not impede traffic circulation on the site and does not create safety or visibility problems for vehicles and pedestrians using the parking lot.
- (e) In the case of parking lots containing twenty (20) spaces or more, the developer may elect to designate up to a maximum of twenty percent (20%) of such spaces for the use of compact cars. The minimum dimensions of such spaces shall be eight feet by sixteen feet (8'x 16') with traffic aisle widths remaining unchanged. Such spaces shall be located so as to be convenient to all major entrances of the proposed establishment and shall be clearly identified through appropriate signage and pavement markings as to their function.
- (f) No certificate of zoning compliance or certificate of occupancy may be issued unless the following criteria are fully satisfied with regard to the approved parking plan:
- (1) Such plan has been fully implemented on the site, including installation of landscaping, curbs, paving or other surface treatment, painting or striping to delineate individual spaces, installation of necessary regulatory, warning and directional signage, delineation of handicapped spaces and all other aspects required or shown on the approved plan; or
 - (2) Such plan, because of unanticipated weather conditions, cannot be fully implemented immediately, but has been guaranteed by a postponed improvement agreement between the developer and the county in a form acceptable to the county attorney, and secured by a letter of credit, cash escrow or other instrument acceptable to the county attorney in an amount equal to the remaining cost of such implementation plus a reasonable allowance for estimated administrative costs, inflation and potential damage to existing improvements and vegetation. The zoning administrator shall determine, on a case-by-case basis, the minimum acceptable level of improvement necessary for issuance of a conditional certificate of zoning compliance under these circumstances.

Secs. 24.1-610 to 24.1-699. Reserved.

ARTICLE VII. SIGNS

Sec. 24.1-700. Applicability.

No sign shall be erected, altered, expanded, reconstructed, replaced or relocated on any property except in conformance with the provisions of this article and all other applicable ordinances and regulations of the county. Repainting or refacing an existing sign or making minor non-structural repairs shall not require a permit.

Sec. 24.1-701. Sign classifications.

Signs, as defined in article I, shall be classified according to one or more of the following definitions:

Advertising sign. A sign which directs attention to a business, profession, product, service, activity or entertainment which is not conducted, sold or offered on the premises upon which such sign is located.

Banner. A piece of cloth, plastic or other flexible material on which words, letters, figures, colors, designs or symbols are inscribed or affixed for the purposes of advertisement, identification, display or direction and which is suspended for display, typically from buildings or poles.

Community identification sign. A permanent sign which identifies the name of a subdivision, apartment complex, condominium or other type of residential or nonresidential development or neighborhood but not containing separate information pertaining to the builder, developer or financier associated with such property; however, signs identifying rental properties may specify the name of the management firm.

Construction sign. A temporary sign which identifies facilities being actively constructed or altered, the anticipated sale, lease or rental of those facilities, or the identity of the persons or firms engaged in the promotion, financing, design, construction or alteration of such facilities.

External illumination. Illumination by floodlights, spotlights or other sources which are focused directly on the face of the sign.

Free-standing sign. A sign, supported by one or more columns, uprights or braces, in or upon the ground, and not attached to any building. Free-standing signs include, but are not limited to, pole signs, monument signs, and signs attached to a flat surface such as a fence or wall not a part of a building.

Monument sign. A type of free-standing sign, other than a pole sign, with sides parallel to or nearly parallel to each other, with the supporting structure as wide as or wider than the sign face itself, and with the entire supporting structure in contact with the ground or within twelve inches (12") of the ground.

Identification sign. An on-premises sign which indicates the name, nature, logo, trademark, commodity, entertainment or service sold, offered or manufactured on the premises, and/or other pertinent information about a building, business, development or establishment on the premises.

Internal illumination. Illumination by a light source which is concealed or contained within the sign itself and which shines through a translucent surface.

Marquee or canopy sign. A sign which is painted on, attached to, or hung from a marquee or canopy which projects from and is totally or partially supported by a building.

Off-Premises directional sign. A sign which is not located on the same premises as the use to which it refers and which is intended to provide information as to the identity and location of a use, but which does not otherwise qualify as an advertising sign.

Off-Premises directional open house sign. A temporary sign which is intended to provide information on the location of a real estate open house, and which is not located on the same premises as the dwelling unit to which it refers. Such signs shall not contain any reference to any individual or firm.

On-Premises directional sign. A sign which is intended to provide directional information for the premises on which it is located. Such sign may pertain to traffic movement, pedestrian movement, parking or loading space, or similar types of information, but shall not consist of advertising matter.

Pennants. Pieces of cloth, plastic or flexible material, generally triangular or rectangular in shape, and which typically are strung together in a series on lines which are hung from poles, between buildings or in other arrangements for the purpose of decoration or attracting attention.

Political sign. A temporary sign which pertains to an issue of public concern or to an issue or candidate in a pending election.

Portable sign. Any sign not permanently attached to a structure or permanently mounted in the ground which can be transported to other locations. Portable signs shall include, but not be limited to, signs which are trailer-mounted or otherwise designed to be relocated, or are constructed on a chassis or carriage with permanent or removable wheels.

Projecting sign. A sign which is attached perpendicularly, or nearly perpendicularly, to a building wall or roof line and which extends from such wall or roof line not more than forty-eight inches (48").

Realty sign. A temporary sign which advertises the sale, lease, rental or display of the lot or building upon which such sign is displayed.

Roof sign. A sign which is an integral part of the building design and is attached to, painted on, or supported by the roof of a building.

Temporary sign. A sign, banner, balloon, pennant, poster, or advertising display constructed of cloth, plastic, sheet, cardboard, wallboard, or other like materials, intended to be displayed for a limited period of time, and not permanently attached to a building or the ground.

Wall sign. A sign which is painted on or attached parallel to a wall of a building and which extends not more than eighteen inches (18") from such wall.

Sec. 24.1-702. General sign regulations.

The following regulations shall apply to all signs, regardless of the zoning district in which located:

- (a) Sign area shall be measured within a continuous perimeter enclosing the entire display face of the sign, including background, framing, trim, molding and other borders, but excluding supports and uprights unless the combined width of such supports or uprights exceeds 25% of the width of the sign face being supported or unless such supports of any width are designed as an integral part of the display for the purpose of illustration or attraction (Note: the provisions concerning support measurement shall not apply to *monument* signs). Where a sign consists of two identical parallel faces which are back to back and located not more than twenty-four inches (24") from each other, only one side of such sign shall be used in computing the area. The area of signs with more than two (2) faces or with faces which are not parallel or in the same plane with each other shall be the sum of the areas of all the sign faces. The area of a cylindrical sign shall be computed by multiplying one-half (1/2) the circumference by the height of the sign. Where individual letters, characters or figures are mounted so as to use a building facade as a background, the area of such sign shall be determined by computing the sum of the area within the outer perimeter of each individual character

or figures comprising the total message, symbol or advertisement. (See Figure VII-1 in Appendix A)

- (b) The maximum allowable accumulative sign area permitted on any parcel shall be calculated with respect to the principal street frontages of a parcel to which the parcel has direct access. Unless otherwise specified, the maximum allowable accumulative area shall be based on the width of the face of the principal building parallel or nearly so to the street frontage. All permanent signs, unless specifically exempted by the terms of this article, shall be counted in the calculation of maximum accumulative sign area. In no event shall the aggregate wall sign area for a building be allowed to exceed 240 square feet.
- (c) The height of signs shall be the vertical distance measured from the average finished grade ground elevation ten feet (10') from where the sign is located to the highest point of the sign. The maximum allowable height of signs shall be as specified by the regulations established herein.
- (d) No sign, unless herein exempted, shall be erected, constructed or altered until a permit has been issued by the county. Fees for sign permits shall be in accordance with the schedule of fees adopted by the board.
- (e) Any sign pertaining to a nonconforming business, commercial or industrial use located within a residential district, shall be deemed a nonconforming structure.
- (f) No signs shall be permitted in conjunction with any business activity not possessing a valid business license issued by the county.
- (g) No sign, other than a sign approved or installed by the Virginia Department of Transportation, shall be located within or over any public right-of-way.
- (h) No sign shall be erected within the area encompassed by a sight triangle in accordance with 24.1-220(b) of this chapter.
- (i) No sign, whether permanent or temporary, shall be attached to trees, utility poles or other supporting structures, unless specifically authorized by the zoning administrator.
- (j) Except in the case of shopping centers, and corner and through lots, not more than one (1) permanent free-standing sign shall be permitted for each lot or parcel. The minimum setback of any free-standing sign, or any portion thereof, from any property line shall be ten feet (10').
- (k) Corner and through lots shall be entitled to one (1) free-standing sign for each road frontage provided, however, that this provision shall not apply along road frontages where restricted access easements are in place.
- (l) Except in the IG district, no sign, whether temporary or permanent, shall extend over or above the ridge line of any roof or the top of any parapet wall of a building.
- (m) The light from any illuminated sign shall be so shaded, shielded or directed that the light intensity or brightness shall not adversely affect surrounding premises nor adversely affect safe vision of operators of vehicles moving on public or private roads, highways, or parking areas. Light shall not shine or reflect in an offensive manner on or into residential structures or motels. No exposed reflective type bulbs or incandescent lamps shall be used on the exterior surface of any sign in such a manner that will cause offensive glare on adjacent property or create a traffic hazard.
- (n) A landscaped planting area shall be provided around the base of any free-standing identification sign. The planting area shall contain four (4) times the area of the sign, be a minimum of six feet (6') in width, be protected from vehicular encroachment, and be landscaped with a combination of trees, low-growing shrubs and/or groundcovers (other than grass), including sufficient quantities to earn at least 12 landscape "credits"

in addition to any required for the yard in which the sign is located. The landscape treatment shall be designed and maintained to ensure that sight triangle standards are met.

Sec. 24.1-703. Permitted signs.

- (a) The following table indicates the functional class, structural class, area, height, and type of illumination of signs permitted within each of the zoning districts prescribed by this chapter. All such signs shall be in accordance with the general provisions established in section 24-702.

SECTION 24.1-703. DISTRICT SIGN REGULATIONS

Functional Class	Zoning Districts Where Permitted	Structural Class			Roof	Illumination Type		Maximum Free-standing Sign Area (sq. ft.)		Maximum Free-standing Sign Height (ft.)		Maximum Cumulative Sign Area per lot or parcel exclusive of free standing sign
		Monument	Pole	Mar-quee/Canopy, Projecting, Wall		Internal	External	Monument	Pole	Monument	Pole	
Identification	RC RR	X	X	X					12	6	6	20 sq. ft.
	NB, ¹ WCI	X	X	X		X	X	32	24	6	8	1 sq. ft. per linear foot of principal bldg width
	LB ¹	X	X	X		X	X	40	32	6	10	1.25 sq. ft. per linear foot of principal bldg width
	GB ¹ IL	X	X	X		X	X	64	50	10	15	1.5 sq. ft. per linear foot of principal bldg width
	EO ¹	X		X		X	X	64	N/A	10	N/A	1.5 sq. ft. per linear foot of principal bldg width
	IG	X	X	X	X	X	X	64	50	10	20	1.5 sq. ft. per linear foot of principal bldg width
	YVA	X	X	X			X	9	9	6	8	wall sign maximum of 5 s.f.; hanging sign maximum of 6 s.f.
Community Identification	RC, RR, R20, R13, R7	X					X	32	N/A	4	N/A	N/A
	RMF	X					X	24	N/A	6	N/A	N/A
	NB, LB, GB, EO, IL, IG, WCI	X					X	32	N/A	6	N/A	N/A
X = PERMITTED												
¹ See Section 24.1-706 for Shopping Center sign standards												

- b) The provisions of Section 24.1-702(a) notwithstanding, when a monument sign is designed with two identical faces arranged back-to-back or in a "V" with an interior angle

of 45-degrees or less, only one sign face shall be counted toward the maximum area requirement.

Sec. 24.1-704. Temporary signs.

The zoning administrator, upon application, may issue permits for the following temporary signs. Such signs shall not count against the normal sign area allowances for the property on which located:

- (a) Signs not exceeding thirty-two (32) square feet in area, which promote a special civic, cultural or religious event such as a fair, exposition, play, concert or meeting sponsored by a governmental, charitable or religious organization. The duration of such permit shall not exceed thirty (30) days.
- (b) Banners when used in conjunction with the opening of a new business or an establishment going out of business in any commercial or industrial district. The duration of such permit shall not exceed thirty (30) days. "Grand-Opening" temporary signage shall be permitted only within the one-year period after the actual business opening occurs.
- (c) Temporary portable signs, not exceeding thirty-two (32) square feet in area or one (1) per parcel, which are intended to identify or display information pertaining to an establishment for which permanent free-standing signage is on order as evidenced by presentation of a copy of an executed order form for such permanent signage to the Zoning Administrator. Such permit shall expire and the portable sign shall be removed upon erection of the permanent sign or thirty (30) days whichever shall occur first. In addition, temporary banners or sign sleeves, neither of which exceed normal sign area allowances, may be used when permanent signage is on order, as evidenced in the manner described above or when in the opinion of the zoning administrator other temporary business circumstances, such as relocation due to fire or disaster, warrant such use and the size of the temporary banner/sleeve does not exceed normally permitted sign area allowances. Such signage may be authorized for periods greater than thirty (30) days.
- (d) Banners when used to announce the grand opening and initiation of sales or leasing of lots and/or dwelling units within a newly developing residential project having at least ten (10) lots or units. The cumulative area of all such banners erected for any single residential project shall not exceed forty (40) square feet. Banners shall not be illuminated. The duration of such permit shall not exceed thirty (30) days.
- (e) Banners when used to announce special events such as new home shows being conducted within a residential subdivision or development. The cumulative area of all such banners erected for any single event shall not exceed forty (40) square feet. Banners shall not be illuminated. Such signs shall not be erected more than fourteen (14) days prior to the event and shall be removed within seven (7) days following the closing of the event; provided, however, that no banner shall be permitted to remain in place for any event for more than thirty (30) days between the first appearance and removal of the banner.
- (f) With the approval of the Virginia Department of Transportation, the zoning administrator may authorize banners to be suspended above a public road right-of-way for a period not to exceed seven (7) days or the duration of the event being announced or promoted plus three (3) days, whichever shall be greater.
- (g) Political headquarters signs in commercial and industrial districts which are in addition to the signs otherwise permitted on the subject property and which do not exceed thirty-two (32) square feet may be erected not earlier than sixty (60) days prior to the election, canvass, or primary to which such signs pertain and shall be removed within seven (7) days following the election, canvass or primary.

Sec. 24.1-705. Special sign regulations applicable to shopping centers.

Shopping centers, as defined in section 24.1-104, shall be subject to the following sign regulations:

- (a) All signs shall comply with the general provisions specified in section 24.1-702 unless otherwise specified herein.
- (b) The following provisions shall apply to shopping center free-standing signs, notwithstanding the district in which located:
 - (1) One (1) free-standing sign shall be permitted for each street frontage.
 - (2) The maximum area of any one (1) free-standing sign shall be one hundred fifty (150) square feet.
 - (3) The maximum cumulative free-standing sign area per shopping center shall be two hundred (200) square feet.
- (c) Each individual tenant within a shopping center shall be permitted one (1) marquee or canopy sign provided that such sign shall not exceed a maximum area of three (3) square feet and shall have a minimum ground clearance to the bottom of the sign of not less than eight (8) feet.
- (d) In addition to the marquee or canopy sign, wall signs shall be permitted provided that the cumulative area of such signs, including the marquee sign, shall not exceed the maximum cumulative sign area allowable in the district in which located, as specified in section 24.1-703.
- (e) Individual free-standing signs for individual shopping center tenants shall not be permitted. For the purposes of this section, lawfully subdivided outparcels which have been depicted on the approved shopping center site plan shall be considered as separate parcels and may be signed as such.

Sec. 24.1-706. Off-premises directional signs.

- (a) The zoning administrator may authorize, by permit, the installation of off-premises directional signs for churches, civic organizations, governmental functions, hospital-based emergency centers and similar activities or establishments, subject to the following findings and conditions:
 - (1) The location of the use to which the sign pertains prevents adequate identification by such signs as are normally permitted.
 - (2) The function of such signs shall be limited to directional or identification purposes.
 - (3) The location of such signs shall be consistent with the uses existing or permitted on the site of such sign. A written authorization from the owner of the property on which such sign is proposed to be located or a recorded easement permitting the placement of the sign shall be submitted to the zoning administrator at the time of application for necessary permits.
 - (4) Such signs shall be subject to the maximum area and height standards established in section 24.1-703 and to all other applicable provisions of this article. Not more than three (3) such signs shall be permitted for any single use. All off-premises directional signs, except those permitted under section 24.1-706(b) below, shall have a background color of green, blue or brown with white letters.

- (b) Off-premises directional open house signs may be erected in any zoning district when in accordance with the general provisions established in section 24.1-702 and subject to the following conditions:
 - (1) The function of such signs shall be limited to directional purposes, as opposed to advertisement of an individual realtor or realty firm. No specific realtor or realty firm name(s) shall appear on such signs provided, however, that the registered trademark of the National Association of Realtors and the equal housing opportunity logo shall be permitted.
 - (2) Such signs shall refer only to real estate open houses whose purpose is to sell, lease, or rent residential property.
 - (3) No such sign shall exceed three (3) square feet in area and three feet (3') in height.
 - (4) Such signs shall be located only at intersections where a turning movement is indicated.
 - (5) No more than two (2) such signs shall be located at any one intersection, nor shall such signs at the same intersection point in the same direction.
 - (6) Such signs shall be displayed only when the residential unit is open for public viewing.
 - (7) Such signs shall be placed only on privately owned property and only with the express consent of the owner of said property.

Sec. 24.1-707. Exempt signs.

The following signs may be erected, altered or maintained in any zoning district when in accordance with the general provisions established in section 24.1-702, provided however, that permits shall not be required unless specifically noted.

- (a) Signs erected and maintained pursuant to and in discharge of any federal, state or county governmental function, or as may be required by law, ordinance or governmental regulation including official traffic signs and signals, warning devices and other similar signs.
- (b) Memorial signs or tablets, cornerstones or names of buildings when cut into masonry or when constructed of bronze or other noncombustible material, but not to exceed six (6) square feet in area.
- (c) Non-illuminated construction signs, not exceeding thirty-two (32) square feet in area and six feet (6') in height and limited to one sign for each street frontage, when displayed on the premises to which such sign refers. No such signs shall be permitted unless a building permit has been issued or unless a site plan for the proposed development has been submitted to the county for official review. Such signs shall be removed at the completion of construction.
- (d) Non-illuminated realty signs, not exceeding six (6) square feet in area and four feet (4') in height in all single family residential districts, and thirty-two (32) square feet and six (6) feet in height in all multi-family, commercial and industrial zoning districts, and limited to one sign for each street frontage, and only when displayed on the premises to which such sign refers.
- (e) Non-illuminated signs identifying official state automobile inspection stations and the inspection number which is then due, provided that such signs shall not exceed sixteen (16) square feet in area and shall be limited to one sign for each street frontage. "A-frame" designs shall be considered as a single sign for the purposes of this section.

- (f) Bulletin boards for churches or other permanent places of worship, or for public buildings, when located on the same premises as the building to which they refer, and provided that such signs shall not exceed twelve (12) square feet in area and six feet (6') in height. If such sign is a free-standing or illuminated sign, a permit shall be secured.
- (g) Non-illuminated political signs and posters of less than or equal to six (6) square feet in area, provided that all such signs shall be removed within seven (7) days following the election, canvass or primary.
- (h) Non-illuminated signs and posters of less than four (4) square feet in area advertising or providing directions to a residential, civic or community operated yard or garage sale or an estate sale or auction.
- (i) Signs attached to machinery or equipment which is necessary or customary to a business including, but not limited to, devices such as gasoline pumps, vending machines, ice machines, etc., provided that such signs refer exclusively to products or services offered on the premises.
- (j) On-premises directional signs, not exceeding three (3) square feet in area and three feet (3') in height and not containing any advertising material or discernible business logo. A permit shall be secured for any illuminated signs.
- (k) Signs displayed in the windows of establishments permitted in commercial and industrial districts provided, however, that such signs shall not occupy more than twenty-five percent (25%) of the total area of the window in which they are displayed and shall not be legible from any public street.
- (l) Menu boards which are either free-standing or wall signs providing information on food and beverages offered for drive-in sales on the premises, provided that such signs and any business logos thereon are not legible from any public right-of-way and do not exceed an aggregate or individual area of thirty-two (32) square feet per drive-thru lane. A permit shall be secured.
- (m) Signs or scoreboards within a ball park or other similar public or private recreational use which are not legible from a public street or adjacent properties.
- (n) Flags, emblems or insignia of the United States, the Commonwealth of Virginia, York County, religious groups, civic organizations, service clubs and similar organizations, groups, agencies, etc. One (1) corporate logo emblem flag per parcel shall be permitted; provided however, that such sign shall count toward the maximum allowable sign area for the subject parcel. Flagpoles shall conform with the height regulations of the district in which located. Placement of flags in such quantities and locations as to be for attention-getting/advertising purposes, in the opinion of the zoning administrator, shall not be considered exempt under this section.,
- (o) Non-illuminated signs warning trespassers or announcing property as posted, not to exceed four (4) square feet per sign. Such signs may be located on trees or, with the permission of the owner, utility poles.
- (p) On-premises safety and directional signs within a business or industrial district which are not visible from a public right-of-way or abutting property lines. A permit shall be secured for any free-standing or illuminated sign.
- (q) Special notice placards, not to exceed a total of four (4) square feet in area for all such placards of any establishment, attached to a building or to a free-standing sign indicating credit cards which are accepted on the premises, group affiliations of which the business is a member, or clubs or groups which utilize, recommend, inspect or approve the business for use by its members. A permit shall be secured for any illuminated signs.

- (r) Identification and directional boards, which are either free-standing or wall signs, designed as an outdoor means of providing information concerning the location of individual establishments or offices within an office, retail or industrial complex, provided that such signs are not legible from any public right-of-way and do not exceed thirty-two (32) square feet and provided further that only one such sign shall be permitted for each lot or for each major sub-area of such complex. A permit shall be secured for any free-standing or illuminated sign.
- (s) Identification signs for churches and schools, regardless of the district in which located, shall be permitted provided that they are of a ground mounted monument type and do not exceed forty (40) square feet in area and six (6) feet in height. A permit shall be obtained.

Sec. 24.1-708. Special standards for community identification signs.

- (a) Residential community or business, office or industrial park identification signs shall be erected in accordance with section 24.1-703 and the following standards:
 - (1) Such signs must be located within the subdivision, apartment complex or other residential development being identified. The sign shall be located on one (1) of the lots within said development or on property which is owned and controlled in common by the owners of individual lots and units within the development and an affidavit affirming the responsibility for maintenance of the sign shall be filed with the application for a permit.
 - (2) A permit as required by section 24.1-702 shall be secured;
 - (3) The sign shall be of masonry, wood or other material construction, but not plastic or similar material, so as to be permanent in nature;
 - (4) Any external illumination shall be by lighting fixtures placed at ground level and directed in such a manner as to prevent glare onto adjacent roadways or properties.

Sec. 24.1-709. Abandoned signs.

A sign, including its supporting structure or brackets, shall be removed by the owner or lessee of the premises upon which the sign is located when the business which it advertises is no longer on the premises. In the event a nonconforming sign refers to a business that has not been in operation for a period of at least two (2) years, such sign shall be considered abandoned and shall be considered to be in violation of this chapter. After reasonable efforts to provide notice to the property owner of the need to remove the violation, and failure of the property owner to do so, the zoning administrator may cause the abandoned sign to be removed at the owner's expense.

Sec. 24.1-710. Prohibited signs.

Unless specifically stated otherwise, the following signs shall not be permitted in the county:

- (a) Signs with moving, revolving or rotating parts, optical illusions of movement, mechanical movement of any description, or other apparent movement achieved by electrical, electronic, mechanical or natural means, but not including time, temperature and date signs, and traditional barber poles.
- (b) Signs with lights which flash, move, rotate, blink, flicker, or vary in either intensity or color.
- (c) Moored balloons or other floating signs that are tethered to a structure or the ground.

- (d) Pennants.
- (e) Portable signs, except those used in the specific instances authorized by permit by the terms of section 24.1-704. This provision shall not be construed to prohibit signs of reasonable size and proportion as determined by the zoning administrator, painted on or attached to automobiles, trucks, buses, trailers or other vehicles which are used in the normal course of business. It shall, however, be construed to prohibit the parking of vehicles or trailers on which signs are hung, or otherwise attached, when such parking is for display purposes intended to circumvent the provisions of this chapter.
- (f) Any sign which by reason of position, shape or color may interfere with, be confused with, or obstruct the view of any traffic sign, signal or device.
- (g) Advertising signs.

Sec. 24.1-711. Maintenance and removal of signs.

All signs shall be maintained in good condition and appearance and shall be removed from the premises when they can no longer be repaired.

Sec. 24.1-712. Standards for increases in sign area and height.

The board may authorize, by special use permit issued in accordance with all applicable procedural requirements, increases in sign area and sign height when unusual topography, vegetation, parcel shape, or the distance from the road right-of-way would impose substantial hardship by making a sign otherwise permitted by the terms of this chapter ineffective and unreadable from vehicles on adjoining (i.e., abutting) roadways; or

In authorizing signs in either of the above situations, the board shall limit the area, height, and location of such signs to that which, in its opinion, is reasonably in keeping with the provisions of Article VII.

Secs. 24.1-713 to 24.1-799. Reserved.

Appendix A

Diagrams, Tables and Figures

Evergreen Trees	Botanical / Common Name	Projected 10-Year Cover Area (square feet)			Minimum Planting Area (square feet)	Uses / Placement					Environmental Tolerances							Problems																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																			
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This chart may be revised from time to time by the Zoning Administrator to add or delete species or to update other information based on consultation with the Cooperative Extension Agent and/or landscape professionals.

Small Deciduous Trees (Up to 35 feet mature height)	Botanical / Common Name	Projected 10-Year Cover Area (square feet)			Minimum Planting Area (square feet)	Uses / Place- ment						Environmental Tolerances						Problems				
		Caliper Size at Planting				Parking Lot	General Use	Small Areas	Overhead Utilities	Rights-of-Way	Restricted Root Z.	Poor Soil	Partial Shade	Full Shade	Wet Soil	Drought Tolerant	Disease	Insects	Weak Wood	Objectable Fruit	Objectable Roots	
		1.5"	2"	3"																		
	Acer ginnala/ Amur Maple	60	80	100	60	X	X	X	X	X	X	X		X								
	Acer palmatum / Japanese Maple	60	80	100	60		X	X	X	X		X										
	Amelanchier arborea / Serviceberry	100	125	150	60		X	X	X	X	X	X				X	X					
	Cercis canadensis / Eastern Redbud	150	175	200	50		X	X	X	X	X	X				X						
	Chionanthus virginicus / White Fringe Tree	80	100	120	60		X	X	X	X		X										
	Crataegus viridis 'Winter King' / Green Hawthorn	150	175	200	100	X	X	X	X	X					X	X	X					
	Koelereturia paniculata / Goldenrain tree	150	175	200	100	X	X	X	X	X					X							
	Lagerstroemia indica / Crape Myrtle	150	175	200	100	X	X	X	X	X	X			X	X							
	Magnolia stellata / Star Magnolia	100	120	150	60		X	X	X	X												
	Magnolia x soulangeana / Saucer Magnolia	150	175	200	60		X	X	X	X												
	Magnolia virginiana/ Sweetbay Magnolia	100	125	150	60		X	X	X	X												
	Malus sp./ Crabapple	150	175	200	100		X	X	X	X	X	X		X								
	Prunus cerasifera / Flowering Plum	100	125	150	100	X	X	X	X	X					X	X	X	X				
	Prunus serrulata/ Kwanzan Cherry	150	175	200	100	X	X	X	X	X					X	X	X	X				
	Prunus subhirtella/ Higan Cherry	150	175	200	100	X	X	X	X	X					X	X	X	X				
	Prunus x yedoensis/ Yoshino Cherry	150	175	200	100	X	X	X	X	X	X				X	X	X	X				

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Large Deciduous Trees (Over 50 feet mature height)	Projected 10-Year Cover Area (square feet)			Minimum Planting Area (square feet)	Uses / Place- ment				Environmental Tolerances							Problems				
	Caliper Size at Planting				Parking Lot	General Use	Small Areas	Overhead Utilities	Rights-of-Way	Restricted Root Z.	Poor Soil	Partial Shade	Full Shade	Wet Soil	Drought Tolerant	Disease	Insects	Weak Wood	Objectionable Fruit	Objectionable Roots
	1.5"	2"	3"																	
Acer platanoides / Norway Maple		275	300	180	X				X		X						X			X
Acer rubrum / Red Maple		275	300	180	X				X		X		X				X			X
Acer saccharum / Sugar Maple		275	300	180					X		X						X			X
Fraxinus pennsylvanica / Green Ash (Marshall's Seedless)		275	300	180	X				X		X				X					
Liquidambar styraciflua 'Rotundiloba' / Fruitless Sweetgum		275	300	180	X	X			X		X		X				X			
Metasequoia glyptostroboides/ Dawn Redwood		275	300	180	X				X		X		X							X
Nyssa sylvatica/ Black Gum		275	300	180					X		X		X				X			
Platanus x acerifolia / London Planetree		275	300	180		X									X	X				
Quercus acutissima / Sawtooth Oak		275	300	180		X			X											
Quercus coccinea / Scarlet Oak		275	300	180	X	X			X											
Quercus phellos / Willow Oak		275	300	180	X	X			X		X				X					
Taxodium distichum/ Baldcypress		275	300	180	X	X			X		X		X							X
Tilia cordata / Littleleaf Linden		275	300	180	X	X			X		X						X			
Ulmus parvifolia / Chinese Elm		275	300	180	X	X			X		X		X				X			
Zelkova serrata / Zelkova		275	300	180	X	X			X		X				X					

This chart may be revised from time to time by the Zoning Administrator to add or delete species or to update other information based on consultation with the Cooperative Extension Agent and/or landscape professionals.

Evergreen Shrubs Botanical / Common Name	Projected 10- Year Cover Area (square feet)		Minimum Planting Area (square feet)	Uses / Placement					Environmental Toler- ances							Problems	
				Parking Lot Screen	General Uses	Small Areas	End Island	Screening/Buffering	Restricted Root Z.	Poor Soil	Partial Shade	Full Shade	Wet Soil	Drought Tolerant	Full Sun		
	18"																
Abelia grandiflora / Glossy Abelia	25		9	X	X							X	X			X	X
Aucuba japonica / Japanese Aucuba	20		9	X	X							X	X				X
Berberis julianae / Wintergreen Barberry	20		9	X	X									X	X	X	
Buxus sempervirens / American Boxwood	6		4			X				X		X	X				
Buxus microphylla / Wintergreen Boxwood	6		4			X				X		X	X				
Camellia japonica / Spring Blooming Camellia	25		9									X	X				
Camellia sasanqua / Fall Blooming Camellia	25		9									X	X				
Chamaecyparis pisifera / Cypress	16		6	X	X		X					X			X	X	
Cleyera japonica / Japanese Cleyera	25		9	X	X			X					X	X	X	X	
Cotoneaster salicifolius/ Willowleaf Cotoneaster	9		6		X	X					X	X	X		X	X	
Cytisus scoparius/ Scotchbroom	16		6		X							X	X		X	X	
Elaeagnus angustifolia/ Russian Olive	36		12	X	X				X						X	X	
Euonymus fortunei/ Wintercreeper Euonymus	6		3		X	X	X				X	X	X	X	X	X	X
Euonymus radicans/ Radicans Euonymus	6		3		X	X	X				X	X	X	X	X	X	X
Ilex cornuta 'Burfordii' / Burford Holly	36		12	X	X				X			X	X	X	X	X	
Ilex cornuta 'Burfordii Nana' / Dwarf Burford Holly	25		9	X	X				X			X	X	X	X	X	
Ilex cornuta 'Carissa' / Carissa Holly	16		6		X	X	X						X	X	X	X	
Ilex crenata 'Compacta' / Compacta Holly	9		6		X	X	X					X	X		X	X	
Ilex crenata 'Helleri' / Helleri Holly	9		6		X	X	X					X	X		X	X	
Ilex crenata 'Nigra' / Nigra Holly	9		6	X	X							X	X		X	X	
Ilex glabra/ Inkberry	16		6	X	X							X	X		X	X	

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Evergreen Shrubs - Continued															
Ilex vomitoria 'Nana' / Dwarf Yaupon Holly	9				6										
Ilex x aquipernyi / Aquipern Hybrid Holly	16				6										
Juniperus chinensis / Chinese Juniper	25				9										
Juniperus horizontalis / Creeping Juniper	9				6										
Juniperus procumbens / Japanese Garden Juniper	9				6										
Ligustrum lucidum	16				6										
Loropetalum chinense / Chinese Fringeflower	16				6										
Mahonia bealei / Leatherleaf Mahonia	16				6										
Myrica cerifera / Bayberry or Wax Myrtle	36				12										
Nandina domestica / Nandina	25				9										
Osmanthus heterophyllus / Holly Osmanthus	25				9										
Picea glauca / Alberta Spruce	6				4										
Pieris japonica / Japanese Pieris	9				6										
Pittosporum tobira / Pittosporum	9				6										
Prunus laurocerasus / Cherry Laurel	25				9										
Prunus laurocerasus 'Otto Luyken' / Cherry Laurel	16				6										
Pyracantha coccinea / Pyracantha	25				9										
Raphiolepis indica / Indian Hawthorn	9				6										
Rhododendron sp. / Azalea	16				6										
Rosa sp. / Shrub Rose	16				6										
Thuja occidentalis / American Arborvitae	16				6										
Viburnum tinus / Laurustinus	16				6										
Yucca filamentosa or flaccida / Yucca	6				4										

This chart may be revised from time to time by the Zoning Administrator to add or delete species or to update other information based on consultation with the Cooperative Extension Agent and/or landscape professionals.

Deciduous Shrubs Botanical / Common Name	Projected 10- Year Cover Area (square feet)		Minimum Planting Area (square feet)	Uses / Placement				Environmental Toler- ances							Problems	
	18"			Parking Lot Screen	General Uses	Small Areas	End Island	Screening/Buffering	Restricted Root Z	Poor Soil	Partial Shade	Wet Soil	Drought Tolerant	Full Sun	Disease	Insects
Azalea calendulaceae / Flame Azalea	16		9		X						X				X	
Azalea nudiflorum / Pinxter Bloom	16		9		X						X				X	
Berberis thunbergii / Japanese Barberry	25		12	X	X	X				X						
Buddleia davidii / Butterfly-Bush	25		12		X			X		X						
Chaenomeles lagenaria / Japanese Flowering Quince	25		12		X										X	
Clethra alnifolia / Sweet Pepperbush	25		12	X	X						X					
Cornus sericea / Redosier Dogwood	25		12	X	X			X		X	X					
Cotoneaster / Cotoneaster	16		9		X	X	X		X	X	X					
Deutzia gracilis / Slender Deutzia	9		4		X	X			X	X	X					
Euonymus alatus 'Compacta' / Burning Bush	25		12	X	X			X		X	X					
Forsythia intermedia / Forsythia	25		12	X	X			X		X						
Hamamelis mollis / Chinese Witch-Hazel	36		15	X				X		X	X					
Hamamelis vernalis / Vernal Witch-Hazel	36		15	X				X		X	X					
Hibiscus syriacus hybrids / Rose of Sharon	25		12	X				X		X						
Hydrangea macrophylla / Bigleaf Hydrangea	16		9		X					X	X					
Hydrangea quercifolia / Oakleaf Hydrangea	16		9		X					X	X					
Hypericum / St. Johnswort	9		4		X	X	X		X	X						
Ilex verticillata / Winter Berry	25		12		X			X		X						
Itea virginica / Virginia Sweetspire	25		12	X	X			X		X	X					
Spiraea japonica / Japanese Spirea	16		9		X	X	X		X	X						
Spiraea prunifolia / Double Bridal Wreath	25		12	X	X			X		X	X					
Spiraea x bumalda / Bumald Spirea	16		9		X	X	X		X	X						
Viburnum carlesii / Koreanspice Viburnum	25		12	X	X			X		X	X					
Viburnum plicatum / Doublelife Viburnum	36		15	X	X			X		X	X					

This chart may be revised from time to time by the Zoning Administrator to add or delete species or to update other information based on consultation with the Cooperative Extension Agent and/or landscape professionals.

Deciduous Shrubs - Continued									
Viburnum tinus/ Tinus Viburnum	25			X		X			
Weigelia florida / Weigelia	25		12	X		X	X		X

This chart may be revised from time to time by the Zoning Administrator to add or delete species or to update other information based on consultation with the Cooperative Extension Agent and/or landscape professionals.

Perennials and Ornamental Grasses		Projected 3- Year Cover Area (square feet)		Minimum Planting Area		Uses / Placement				Environmental Toler- ances					Problems			
						Parking Lot Screen	General Uses	Small Areas	End Island	Restricted Root Z	Poor Soil	Partial Shade	Full Shade	Wet Soil			Drought Tolerant	Full Sun
Botanical / Common Name						S.F.	Height (feet)											
Perennials:																		
Achillea/ Yarrow						4	2		X	X						X		
Astilbe arendsii/ False Spirea						3	2		X	X			X					
Caryopteris x clandonensis/ Blue Mist Spirea						6	2		X	X			X			X		
Coreopsis grandiflora/ Coreopsis						4	1.5		X	X			X			X		
Coreopsis verticillata/ Coreopsis						4	1.5		X	X					X			
Dianthus gratianopolitanus 'Baths Pink'/ Bath's Cheddar Pink						4	1		X	X					X			
Dryopteris erythrosora/ Autumn Fern						3	2		X	X			X	X				
Echinacea purpurea/ Purple Coneflower						3	2		X	X			X			X		
Eupatorium/ Joe Pye Weed						6	5	X	X	X			X	X				
Gaillardia grandiflora/ Blanket Flower						4	1		X	X			X	X		X		
Helopsis helianthoides/ False Sunflower						6	3		X				X	X		X		
Hemerocallis/ Daylily						4			X	X								
Hosta/ Hosta						4			X	X			X	X		X		
Iberis sempervirens/ Candytuft						4	3		X	X			X	X				
Iris ensata/ Japanese Iris						3	1		X	X			X			X		
Lavandula angustifolia/ Lavender						4	3		X	X			X			X		
Perovskia atriplicifolia/ Russian Sage						4	1.5		X	X			X			X		
Rudbeckia fulgida/ Black-eyed Susan						6	3		X	X					X			
Salvia x superba/ Perennial Salvia						6	2.5		X	X			X	X		X		
						4	2		X	X					X	X		

This chart may be revised from time to time by the Zoning Administrator to add or delete species or to update other information based on consultation with the Cooperative Extension Agent and/or landscape professionals.

Perennials - Continued															
Scabiosa columbaria/ Pincushion Flower	2				4	1				X	X	X	X	X	X
Sedum spectabile 'Autumn Joy' / Autumn Joy	4				6	3				X	X	X	X	X	X
Sedum															
Stachys byzantina/ Lambs Ear	4				6	1				X	X	X	X	X	X
Verbena canadensis/ Verbena	6				6	1				X	X	X	X	X	X
Veronica spicata/ Speedwell	2				3	1				X	X	X	X	X	X
Veronica x 'Sunny Border Blue' / Veronica 'Sunny Border Blue'	2				3	2				X	X	X	X	X	X
Ornamental Grasses:															
Calamagrostis acutiflora/ Feather Reed Grass	6				9	5				X	X	X	X	X	X
Chasmanthium latifolium/ Northern Sea Oats	6				9	4				X	X	X	X	X	X
Cortaderia selloana/ Pampas Grass	9				12	6				X	X	X	X	X	X
Liriope muscari/ Liriope	3				4	1				X	X	X	X	X	X
Miscanthus sinensis / Maiden Grass	9				12	5				X	X	X	X	X	X
Miscanthus purpurascens/ Miscanthus	9				12	5				X	X	X	X	X	X
Muhlenbergia capillaris/ Pink Hair Grass	6				9	3				X	X	X	X	X	X
Ophiopogon japonicus	2				3	.5				X	X	X	X	X	X
Panicum virgatum/ Switch Grass	6				9	5				X	X	X	X	X	X
Pennisetum alopecuroides/ Fountain Grass	6				9	3				X	X	X	X	X	X
Phalaris arundinacea/ Ribbon Grass	4				6	3				X	X	X	X	X	X

This chart may be revised from time to time by the Zoning Administrator to add or delete species or to update other information based on consultation with the Cooperative Extension Agent and/or landscape professionals.

On roll call the vote was:

Yea: (4) Shepperd, Noll, Wiggins, Burgett
 Nay: (1) Zaremba

UNFINISHED BUSINESS**APPLICATION NO. ZT-69-02, YORK COUNTY BOARD OF SUPERVISORS: PROPOSED YORK-TOWN HISTORIC DISTRICT OVERLAY/YORKTOWN DESIGN GUIDELINES**

Mr. Carter briefly reviewed Application No. ZT-69-02 to establish the Yorktown Historic District Overlay and to adopt the Yorktown Design Guidelines. He noted the Board had held a public hearing on the application and had discussed the matter during work sessions. He noted one change on Page 3, stating it should read a "3-member board" referring to the review committee. Mr. Carter recommended an effective date June 1, 2004, to give ample time to recruit and appoint members to the review committee.

Discussion followed regarding the composition of the review committee and the incorporation of some of the recommendations made by the residents of Yorktown regarding the guidelines and the committee.

Mr. Shepperd moved the adoption of proposed Resolution R03-78 that reads:

A RESOLUTION TO SPONSOR AN APPLICATION TO AMEND THE YORK COUNTY ZONING ORDINANCE (CHAPTER 24.1, YORK COUNTY CODE) TO REVISE SECTION 24.1-327(b) OF THE YVA – YORKTOWN VILLAGE ACTIVITY DISTRICT REGULATIONS TO ALLOW THE CONSTRUCTION OF NEW SINGLE-FAMILY DETACHED RESIDENCES, OR ADDITIONS THERETO, AS A MATTER OF RIGHT

WHEREAS, in accordance with Section 24.1-327(b) of the Zoning Ordinance, any new single family detached residential construction or substantial additions in the YVA District are subject to review and approval by the Planning Commission and Board of Supervisors, and minor additions are subject to review by the Board; and

WHEREAS, given the adoption of the Yorktown Historic District and Design Guidelines, the Board is of the opinion that such single family construction or additions can be appropriately and adequately reviewed by the Historic Yorktown Design Committee and permitted as a matter of right, subject to compliance with certain minimum setback and yard requirements; and

WHEREAS, in the interest of good zoning practice, the Board wishes to sponsor an application to amend Section 24.1-327(b) to establish such an approval process;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this 2nd day of December, 2003, that it does hereby sponsor an application to amend section 24.1-327(b) of the York County Zoning Ordinance to establish an approval process for single-family detached dwellings, and additions thereto, in the YVA District that does not require review by the Planning Commission and Board of Supervisors.

BE IT FURTHER RESOLVED that the Board does hereby forward the following draft language to the Planning Commission for review, consideration, public hearing and recommendation in accordance with applicable procedures.

Sec. 24.1-327. YVA-Yorktown village activity district.

(b) *Special procedural requirements.*

- (1) The use of any land or building within the YVA district on the date of the inclusion of such property in the district may either continue to be used for its then existing purpose or may thereafter be changed, but only in accordance with all applicable regulations, to accommodate any of the land uses listed in section 24.1-327(c), any provisions of article VIII, Nonconforming Uses, of this chapter to the contrary notwithstanding.

- (2) Any proposed new use, other than single-family detached dwellings, shall be approved only by the board of supervisors in accordance with the procedures for special use permits in section 24.1-115 of this chapter. Permitted land uses shall be those listed in section 24.1-327(c).
- (3) ~~Proposed enlargements or extensions of any single-family detached dwelling may be authorized, without public hearing, by resolution of the board.~~ With the exception of single family detached dwellings, the pProposed enlargement or extensions of any use in this district which would result in an increase of less than twenty-five percent (25%) in either total lot coverage or floor area may be authorized, without public hearing, by resolution of the board. Proposed enlargement or expansion of any use, other than a single-family detached dwelling, that would result in an increase of twenty-five percent (25%) or more in either total lot coverage or floor area shall be subject to approval in accordance with the procedures for special use permits.
- (4) Proposed changes in use of land, buildings or structures within the district may be approved by the zoning administrator upon a determination that the proposed new use is similar in type, size, scope and intensity to the previous use and that it is one of permitted uses listed in subsection (c) below. Where, in the opinion of the zoning administrator, such similarities do not exist, the proposal shall be subject to review and approval in accordance with the procedures for special use permits specified in section 24.1-115 of this chapter.
- (5) The construction of new single-family detached dwellings, or the enlargement of existing single-family detached dwellings, ~~may be approved by the board of supervisors shall be permitted as a matter of right~~ provided that the proposed location is not within one of the areas specifically designated for commercial development by the adopted Yorktown ~~m~~Master ~~p~~Plan and that the following setback and dimensional requirements, ~~or such other standards as the board deems necessary and appropriate,~~ are observed, and provided that all applicable requirements and procedures set out in the Yorktown Historic District Overlay (Section 24.1-377) are observed.

Front Yard	<u>Twenty-five feet (25')</u> [7.5m]
Side Yard	Ten feet (10') [3m] , five feet (5') [1.5m] for accessory buildings
Rear Yard	Twenty feet (20') [6m] , five feet (5') [1.5m] for accessory buildings
Building Height	Thirty-five feet (35') [10.5m] , unless a lower height is deemed necessary to the board to ensure compatibility with the character of the surrounding area.

- (6) Applications for approval of new single family detached residences, or additions to existing single family detached residences, which do not comply with the above noted minimum dimensional standards shall be referred to the Planning Commission and Board of Supervisors in accordance with the same procedures applicable to requests for special use permits.

On roll call the vote was:

Yea: (5) Zaremba, Noll, Wiggins, Shepperd, Burgett
 Nay: (0)

Mr. Shepperd then moved the adoption of proposed Ordinance No. 03-13(R-1) that reads:

AN ORDINANCE TO AMEND THE YORK COUNTY ZONING ORDINANCE (CHAPTER 24.1, YORK COUNTY CODE) TO ESTABLISH A NEW SECTION 24.1-377, YORKTOWN HISTORIC DISTRICT OVERLAY, AND TO ADOPT THE COMPANION YORKTOWN DESIGN GUIDELINES TO BE USED IN THE IMPLEMENTATION AND ADMINISTRATION OF THE YORKTOWN HISTORIC DISTRICT

WHEREAS, the York County Board of Supervisors has sponsored Application No. ZT-69-02 to allow consideration of the proposed Yorktown Historic District Overlay District and the accompanying Yorktown Design Guidelines, pursuant to the authority provided under Section 15.2-2306 of the Code of Virginia (1950, as amended); and

WHEREAS, subsequent to referral by the Board, the Planning Commission considered these proposed amendments and guidelines in great detail and had benefit of the extensive review and recommendations provided by the Yorktown Design Guidelines Study Committee; and

WHEREAS, the Planning Commission has conducted a duly advertised public hearing on the proposed amendments in accordance with applicable procedures and has recommended approval and adoption; and

WHEREAS, the Board of Supervisors has conducted a duly advertised public hearing on this application and several work sessions and has provided additional opportunities for public review and comment and has taken all comments and suggestions into consideration in its deliberations; and

WHEREAS, the Board of Supervisors has determined that the proposed amendments and guidelines are appropriate and necessary for the proper protection of the special historic and architectural character of Yorktown; and

WHEREAS, the Board is of the opinion that the proposed amendments strike an appropriate balance between the public goals of preservation and enhancement of the special character of Yorktown and landowners' desires to avoid unnecessary regulation;

NOW, THEREFORE, BE IT ORDAINED by the York County Board of Supervisors this the 2nd day of December, 2003, that it does hereby approve Application No. ZT-69-02 to amend the York County Zoning Ordinance to include a new section, 24.1-377 – Yorktown Historic District Overlay, as set forth below, and to adopt the proposed Yorktown Design Guidelines, as set forth in the document entitled "Draft Yorktown Historic District and Design Guidelines," dated November 14, 2002, and to approve and adopt the boundaries of the Yorktown Historic District, as delineated in said document.

BE IT STILL FURTHER ORDAINED that the effective date of Section 24.1-377 and the accompanying Design Guidelines shall be June 1, 2004, in order to allow time for appointment, organization and training of the Historic Yorktown Design Committee and also for the sponsorship and processing of a text amendment application to eliminate the requirement for Board of Supervisors review and approval of single family detached residential construction or additions in the YVA District.

Add Section 24.1-377, as follows:

Sec. 24.1- 377 Yorktown Historic District Overlay

(a) Statement of Intent

The Yorktown Historic District is intended to promote and protect the historical significance, appearance, architectural quality, and general welfare of the Yorktown community through the identification, preservation, and enhancement of landmarks, buildings, structures, and areas which have special historical, cultural, architectural, or archaeological significance as provided by Section 15.2- 2306, Code of Virginia. The Historic District and the accompanying guidelines are drawn with the objective of protecting and improving the village character and ambiance and ensuring its preservation for the benefit of the residents of Yorktown and York County.

The preservation of the historical significance of Yorktown is of paramount importance and it is recognized that the deterioration, destruction, or alteration of Yorktown landmarks, buildings, structures, and significant areas may cause the permanent loss of unique resources which are of great value to the people of Yorktown and York County, the Commonwealth of Virginia, and the nation. These special controls and incentives are warranted to ensure that such losses are avoided when possible.

The purposes for establishing a special Yorktown Historic District zoning classification are:

- (1) To preserve and improve the historical significance of Yorktown for all residents of York County by protecting familiar and treasured visual and historical elements in the area.
- (2) To promote tourism by protecting historical and cultural resources attractive to visitors and thereby supporting local businesses.
- (3) To stabilize and improve property values by providing guidelines for the upkeep and rehabilitation of older structures and by encouraging desirable uses and forms of residential and commercial development.
- (4) To educate residents on the local cultural and historic heritage as embodied in the Historic District and to foster a sense of pride in this heritage.
- (5) To prevent the encroachment of buildings and structures which are architecturally incompatible with their environs within areas of architectural harmony and historic character.

(b) Definitions

- (1) *Historic Yorktown Design Committee (HYDC)* - A three-member board appointed by the York County Board of Supervisors, the purpose of which is to review and determine the appropriateness of proposed actions involving properties within the Historic District.
- (2) *Certificate of Appropriateness* - A statement signed by the Chair of the Historic Yorktown Design Committee, or his designee, which certifies the appropriateness of a particular request for the construction, alteration, reconstruction, repair, restoration, demolition, or razing of all or a part of any building or structure within the Historic District, subject to the issuance of all other permits needed for the matter sought to be accomplished.
- (3) *Contributing Building/Structure* - A building or structure within the Yorktown Historic district that was constructed between and including the years 1866 to 1945.
- (4) *Demolition* - The dismantling or tearing down of all or part of any building or structure and all operations incidental thereto.

- (5) *Exterior Features* - The architectural style, general design, and general arrangement of the exterior of a building or structure, including the kind and texture of the building material and the type and style of all windows, doors, light fixtures, signs, other appurtenant fixtures.
- (6) *Pivotal Building/ Structure* - A building or structure within the Yorktown Historic District that was constructed in 1865 or before.
- (7) *Non-Contributing Building/ Structure* - A building or structure within the Yorktown Historic District that was constructed in 1946 or later.
- (8) *Yorktown Design Guidelines* - The architectural design guidelines adopted by the Board of Supervisors in conjunction with the adoption of this overlay district and any subsequent amendments as may be adopted by the Board of Supervisors from time to time.

(c) Application of District

The Yorktown Historic District, as designated by the Board of Supervisors, shall be shown as an overlay to the underlying zoning district(s) and shall serve as a supplement to those underlying district regulations.

(d) Certificate of Appropriateness

- (1) Within the Yorktown Historic District, no historic landmark or building or structure, including fences and signs, shall be erected, reconstructed, altered, restored, demolished, or moved until a certificate of appropriateness for such work has been issued as provided herein. The certificate of appropriateness shall be displayed on the work site.
- (2) In any case where the work to be performed requires the issuance of a permit or approval under other terms of the Zoning Ordinance or York County Code, no such permit shall be granted until a certificate of appropriateness has been approved and issued as required herein. The certificate of appropriateness shall be displayed on the site.

(e) Actions Exempted from Review

Certain actions that are deemed not to permanently affect the character of the historic district shall be exempt from review. Such actions shall include the following and any similar actions, as determined by the Zoning Administrator, that will have no more effect on the character of the district than those listed:

- (1) Interior alterations.
- (2) Maintenance or repair which does not result in a change in exterior features and appearance (such as repainting resulting in the same color, re-roofing with a material that matches the existing, or gutter replacement that matches the existing). Painting of previously unpainted masonry surfaces is not exempt from review.
- (3) Changes to a structure that do not involve addition or demolition of building floor area or volume and are not subject to view from adjacent properties or rights-of-way.
- (4) Removal of television or radio antennas, solar collectors, and similar appurtenances.
- (5) Demolition of any building or structure that the Building Official orders, in writing, because of an unsafe or dangerous condition.

(6) Landscaping.

(f) Actions Permitted with Administrative Approval

(1) Certain actions that are deemed to have only a minor effect on the character of the historic district may be approved by the Zoning Administrator upon submittal of an appropriate application form. Such actions shall include the following and any similar actions, as determined by the Zoning Administrator, which will have no more effect on the character of the district than those listed.

- a. Additions or deletions to a structure which will not substantially change the architectural character of the structure and which are generally hidden from public view.
- b. Construction of piers, docks, and bulkheads.
- c. Outside storage on a business property that does not involve structural changes.
- d. Painting the exterior of a structure when using one of the colors shown on the approved palette of colors.
- e. Demolition or moving of any building or structure other than a Pivotal structure.

(2) The Zoning Administrator shall be guided by the standards and guidelines referenced in Section 24.1-377(h) and shall have the authority to request modifications of a specific proposal in order that the proposal may comply with such standards and guidelines. In any case where the Zoning Administrator is uncertain of his or her authority to act on a particular application under this section or in any case where the Zoning Administrator and the applicant cannot agree on changes in the proposal, the application shall be referred to the HYDC for action. In the case of disapproval by the Zoning Administrator, the applicant may appeal the decision within thirty (30) days to the HYDC. The Zoning Administrator shall keep a record of decisions under this section and shall report on such decisions to the HYDC at its next regular meeting.

(g) Actions Requiring Approval by the Historic Yorktown Design Committee

(1) All actions not covered under Sections 24.1-377(e) or 24.1-377(f) above and any other actions not specifically exempted by the terms of this Article shall be permitted only after issuance of a certificate of appropriateness by the HYDC. Such actions include, but are not limited to:

- a. Razing, demolishing, or moving a *Pivotal* building or structure.
- b. Constructing a new building or structure.
- c. Any addition to, or modification of, a building or structure which alters the square footage of the structure or otherwise alters its size, height, contour or outline, or color.
- d. Any change or alteration of the exterior features and architectural style of a building, including removal or rebuilding of porches, dormers, cupolas, stairways, terraces, and the like.
- e. Addition or removal of one or more stories of a building or alteration of the roofline of such structures.
- f. Construction of walls or fences.

g. Any addition of, or alteration to, a sign.

(h) Standards and Guidelines for Review

In considering any request for a certificate of appropriateness, the following standards, and the Yorktown Design Guidelines, as adopted by the Board of Supervisors, and as may amended from time to time (which are incorporated into this ordinance by reference), shall be considered.

(1) Generally, the following should be considered:

- a. The relationship of the proposed changes to the historic, architectural or cultural significance of the structure and the surrounding district.
- b. The appropriateness of the change in terms of architectural compatibility with the distinguishing historic and architectural features of the structure and the district. Architectural compatibility shall be judged in terms of a proposed structure's mass, dimensions, materials, color, ornamentation, architectural style, lighting, and other criteria deemed pertinent.

(2) For renovations to Pivotal structures (pre-1865), the conformance of the change with the standards established by the U. S. Secretary of the Interior for the rehabilitation of historic buildings.

(3) For new construction, the following shall apply:

- a. The design for new construction shall be sensitive to and take into account the special characteristics that the district is established to protect. Such considerations are to include building scale, height, orientation, site coverage, spatial separation from other buildings, facade and window patterns, entrance and porch size and general design, materials, texture, color, architectural details, roof forms, emphasis of horizontal or vertical elements, walls, fences, and any other features deemed appropriate by the reviewing authority (Zoning Administrator or HYDC).
- b. The design of the new construction shall recognize the relationships among buildings in the immediate setting rather than specific styles or details since architectural styles and details may throughout the Historic District.

(4) For signage, the following shall apply:

- a. Signs shall be compatible with and relate to the design elements of the building they are associated with or attached to, rather than obscure or disrupt such design features.
- b. Signs shall be compatible with other signs and buildings in the district and adjacent to the property.
- c. Compatibility shall be judged in terms of dimensions, materials, color, letter style and placement, lighting, and overall general effect on the building and Historic District.

(5) For accessory structures, the following shall apply:

- a. Existing characteristic features such as trees, walls, fencing, walkways and other similar structures or site features that reflect the building's or district's history and development shall be retained.

- b. Accessory structures shall be appropriate to and compatible with the architectural features of the primary structure and the district.

(i) Historic Yorktown Design Committee

- (1) **Creation** - For the general purposes of this Article and specifically to preserve and protect the historic character of Yorktown, there is hereby created a committee to be known as the Historic Yorktown Design Committee (HYDC) to be composed of three (3) voting members. The members of the HYDC shall be appointed by the Board of Supervisors. The Board of Supervisors may, at its discretion, also appoint up to two alternate members to be called upon to sit with the Committee as regular voting members from time to time to ensure that a quorum is present.
- (2) **Terms** - The members of the HYDC shall serve overlapping terms of four (4) years. Initially, one (1) member shall be appointed for a term of one (1) year, one (1) member shall be appointed for a term of two (2) years, one (1) member shall be appointed for a term of three (3) years. Thereafter, all appointments shall be made for a term of four (4) years. Reappointments shall be in accordance with such policies as may be established by the Board of Supervisors. Vacancies on the HYDC shall be filled within sixty (60) days of the vacancy occurring.
- (3) **Removal** - Any member of the HYDC may be removed from office by the Board of Supervisors for inefficiency, neglect of duties, or malfeasance. An appointment to fill a vacancy shall be only for the unexpired term of the vacancy.
- (4) **Composition of the Board** - Members of the HYDC shall be residents of York County and shall be residents or property owners from the Yorktown Historic District.
- (5) **Officers** - The HYDC shall elect from its own membership a chair and vice chair who shall serve annual terms and may be elected to successive terms. The secretary of the HYDC shall be a staff member in the employ of the county.
- (6) **Powers and Responsibilities** - The HYDC shall be responsible for administering and overseeing the implementation of the Yorktown Design Guidelines and shall have the power and authority to issue or deny certificates of appropriateness for construction, reconstruction, exterior alteration, demolition, and relocation within the historic district. The HYDC shall also assist and advise the Board of Supervisors and property owners in matters involving historically significant sites and buildings or other properties in the Historic District.
- (7) **Records of Meetings** - A record shall be kept of all pertinent information presented at all meetings and of all decisions by the HYDC.
- (8) **Annual Report** - The HYDC shall report on an annual basis to the Board of Supervisors on its activities.

(j) Applications for and Processing of Certificates of Appropriateness

- (1) **Pre-application Conference** - Prior to the formal submission of a proposed plan and application for a certificate of appropriateness, the applicant or his or her representative may hold a conference with York County staff concerning the proposal. At that time the applicant is encouraged to submit and discuss preliminary studies of the concept of the proposed action and seek comments and recommendations.
- (2) **Information Required** - Applications for certificates of appropriateness shall be submitted on a form available from the County. In general, information required will include a site plan, if appropriate, current color photographs of the

subject building, structure or site and adjacent buildings and sites, elevations where exterior changes are proposed, information on proposed ground disturbances, and samples of or information describing the materials to be used, including color samples. Other material as may be necessary will be listed on the application form. The staff or the HYDC may also require additional information including, but not limited to, models, visual simulations, and color renderings.

- (3) **Frequency of Meetings** - The HYDC shall hold an annual meeting each year during the month of January and shall, at the annual meeting, adopt a schedule of regular monthly meeting dates for the balance of the calendar year. The HYDC shall meet at least once in each calendar month, provided, however, it need not meet if no applications have been filed or are pending. Applications for HYDC review shall be filed at least twenty-one (21) days prior to the date of the meeting at which the request is to be considered.
- (4) **Public Notice** - Meetings of the HYDC shall be open to the public. Notice shall be given to all applicants and adjacent property owners and notice of all meetings of the HYDC, and the applications to be reviewed shall be set at least seven (7) days prior to the meeting. A sign shall be posted on the subject property by the County indicating the date of the hearing to consider the applicant's request. The HYDC may accept written and oral comments concerning applications under consideration.
- (5) **Standards and Guidelines for Review** - The HYDC shall be guided in its discussion and review of applications by the standards and guidelines set forth in Section 24.1-377(h).

The HYDC shall give reasons for its decisions, shall act promptly on applications before it, and shall coordinate its procedures with those of other agencies and individuals charged with the administration of this Chapter and other provisions of the York County Code.

The HYDC is not required to limit new construction, alterations, or repairs to the architectural style of any one period and may seek advisory assistance from experts in such fields, as it may deem necessary and appropriate.

- (6) **Decisions and Findings** - In all final decisions rendered, the HYDC shall briefly state its findings in writing, and in the case of disapproval, it may make recommendations to the applicant with respect to changes in the design, texture, material, color, line, mass, dimension or lighting of the alteration or improvements that would make it approvable. Such findings and recommendations shall be set forth in the regularly maintained minutes of the HYDC.

Within five (5) business days of approval of a request, a certificate of appropriateness, signed by the secretary of the HYDC and the Zoning Administrator and bearing the date of issuance, shall be issued, attached to the application, and forwarded to the applicant. Once the certificate has been issued, the Zoning Administrator shall routinely inspect the work being performed to ensure compliance with the terms of the certificate of appropriateness.

- (7) **Timely Action** - The HYDC shall have sixty-five (65) days from the receipt of a completed application to render its decision. If no decision has been made by the HYDC within this time frame, and no mutual agreement between the applicant and the HYDC has been made for the extension of the time period, the Zoning Administrator shall submit the application to the Board of Supervisors, which shall review the application in the same manner as if a decision of the HYDC had been appealed.
- (8) **Action on Related Permits** - The Building Official shall not issue a permit for any erection, reconstruction, exterior alteration, restoration, demolition, or razing of a building or structure in the Historic District until the same has been re-

viewed and approved by the Zoning Administrator, the HYDC as required herein, or on appeal by the Board of Supervisors or the circuit court.

- (9) **Expiration of Certificates of Appropriateness** - Any certificate of appropriateness issued pursuant to this article shall expire twelve (12) months from the date of issuance if the work authorized thereby has not been commenced and diligently and substantially pursued. Such certificate shall also expire and become null and void if such authorized work is suspended or abandoned for a period of twelve (12) months after being commenced. On written request from an applicant, the HYDC may grant a single extension of its approval for a period of up to one (1) year if, based upon submissions from the applicant, the HYDC finds that conditions on the site and in the area of the proposed project are essentially the same as when approval originally was granted.

(k) Applications for Demolition (Reference Section 15.2-2306 A.3, Code of Virginia)

- (1) Prior to the issuance of a certificate of appropriateness for demolition of a *Pivotal* building or structure within the district, the HYDC shall make the following findings:
- a. The purpose and necessity of the demolition are in accordance with the intent of the historic district.
 - b. Loss of the structure would not be adverse to the district or the public interest by virtue of its uniqueness or its significance to the district.
 - c. Demolition would not have an adverse effect on the character and surrounding environment of the district.
 - d. Where a development plan for a new use of the site is proposed and submitted, the HYDC shall review the proposed development pursuant to the regulations and intent of the district. Consideration shall be given to the benefits of the proposed development and the trade-offs for demolition of the building or structure.
- (2) In addition to the authorization procedures set out above and the right of appeal as set forth in Section 24.1-377(l), the owner of a *Pivotal* building within the district shall as a matter of right be entitled to demolish such Pivotal building provided that:
- a. The property owner has applied, on appeal, to the Board of Supervisors for such right; and
 - b. The owner has for the period of time set forth in the time schedule and cost parameters set forth in Section 15.2-2306 A. 3. of the *Code of Virginia*, 1950, as it may be amended from time to time, made a bona fide offer to sell such building and the land pertaining thereto, to the county, or to any person, firm, corporation, government or agency thereof, which gives reasonable assurance that it is willing to preserve and restore the building and the land pertaining thereto; and
 - c. No bona fide contract binding upon all parties thereto shall have been executed for the sale of any such building and the land pertaining thereto, prior to the expiration of the application time period set forth in the time schedule contained in Section 15.2-2306 A. 3. of the *Code of Virginia*, 1950, as it may be amended from time to time.
 - d. Before making a bona fide offer to sell, as provided herein, an owner shall first file a statement with the Zoning Administrator identifying the property, stating the offering price, the date the offer of sale is to begin and the name of the real estate agent. No time period as set forth in the

schedule above shall begin to run until such statement has been filed. Within fourteen (14) days of receipt of a statement, the Zoning Administrator shall distribute copies to the Board of Supervisors, the Historic Yorktown Design Committee, and the County Administrator.

- e. Any appeal taken to the Court with respect to a decision of the Board of Supervisors concerning demolition shall not affect the right of the owner to make the bona fide offer to sell referred to above; provided, however, that no offer to sell shall be made more than one year after a final decision by the Board of Supervisors but, thereafter, the owner may renew his request to the Board of Supervisors for authorization of the demolition.

(l) Appeals

- (1) **Appeal to the Board of Supervisors** - In any case in which the applicant is dissatisfied with the decision of the HYDC on an application for a certificate of appropriateness the applicant may appeal the decision to the Board of Supervisors within thirty (30) days of the decision by filing a notice of appeal with the Clerk of the Board of Supervisors. In exercising its powers, the Board of Supervisors may, in conformity with the provisions of this Article, reverse or affirm, wholly or partly, or may modify, an order, requirement, decision, or determination made by the HYDC and make such order, requirement, decision, or determination as ought to be made.
- (2) **Appeal to the Circuit Court** - The applicant or the aggrieved owner of any property that is adjacent to the subject property shall have the right to appeal any final decision of the Board of Supervisors pursuant to this article to the Circuit Court by following the procedure set out in Section 15.2-2306 of the *Code of Virginia*, 1950, as amended.

On roll call the vote was:

Yea: (5) Noll, Wiggins, Shepperd, Zaremba, Burgett
Nay: (0)

CLOSED MEETING. At 9:52 p.m. Mr. Shepperd moved that the meeting be convened in Closed Meeting pursuant to Section 2.2-3711(a)(1) of the Code of Virginia pertaining to appointments to Boards and Commissions; and Section 2.2-3711(a)(5) pertaining to prospective business or industry where no public announcement has yet been made.

On roll call the vote was:

Yea: (5) Wiggins, Shepperd, Zaremba, Noll, Burgett
Nay: (0)

Meeting Reconvened. At 10:35 p.m. the meeting was reconvened in open session by order of the Chair.

Mrs. Noll moved the adoption of proposed Resolution SR-1 that reads:

A RESOLUTION TO CERTIFY COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT REGARDING MEETING IN CLOSED MEETING

December 2, 2003

WHEREAS, the York County Board of Supervisors has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3711.1 of the Code of Virginia requires a certification by the York County Board of Supervisors that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this the 2nd day of December, 2003, hereby certifies that, to the best of each member's knowledge, (1) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (2) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed, or considered by the York County Board of Supervisors.

On roll call the vote was:

Yea: (5) Shepperd, Zaremba, Noll, Wiggins, Burgett
Nay: (0)

APPOINTMENT TO THE COLONIAL COMMUNITY CORRECTIONS BOARD

Mrs. Noll moved the adoption of proposed Resolution R03-190 that reads as follows:

A RESOLUTION TO APPOINT A YORK COUNTY REPRESENTATIVE TO THE COLONIAL COMMUNITY CRIMINAL JUSTICE BOARD

BE IT RESOLVED by the York County Board of Supervisors this the 2nd day of December, 2003, that Walter C. Zaremba be, and he is hereby, appointed as a York County representative to the Colonial Community Criminal Justice Board to fill a three-year term, such term to begin January 1, 2004. and expire December 31, 2006.

On roll call the vote was:

Yea: (5) Zaremba, Noll, Wiggins, Shepperd, Burgett
Nay: (0)

Meeting Adjourned. At 10:40 p.m. Chairman Burgett declared the meeting adjourned to 6:00 p.m., Tuesday, December 9, 2003, in the East Room, York Hall, for the purpose of conducting a work session.

James O. McReynolds, Clerk
York County Board of Supervisors

James S. Burgett, Chairman
York County Board of Supervisors